

Tab 1	SB 306 by Berman (CO-INTRODUCERS) Perry, Bracy; (Identical to H 00093) Fetal Alcohol Spectrum Disorders				
160078	A	S	CF, Berman	Delete L.35 - 89:	02/05 10:25 AM
Tab 2	SB 652 by Cruz; Human Trafficking Public Awareness Signs				
953820	A	S	CF, Cruz	Delete L.36 - 37:	02/07 08:18 AM
Tab 3	CS/SB 654 by JU, Cruz (CO-INTRODUCERS) Gibson, Jones; (Similar to H 00905) Protective Injunctions				
Tab 4	CS/SB 668 by CJ, Cruz; (Similar to H 00109) Custodial Interrogations of Minors				
Tab 5	CS/SB 1032 by JU, Burgess; (Similar to H 00845) Guardianships				
956564	A	S	CF, Burgess	Delete L.168 - 197:	02/07 08:19 AM
Tab 6	SB 1040 by Brodeur; (Compare to CS/H 00733) Registry of Persons with Special Needs				
443230	D	S	CF, Brodeur	Delete everything after	02/05 10:20 AM
Tab 7	SB 1042 by Brodeur; (Identical to H 00735) Public Records/Registry of Persons with Special Needs				
105446	A	S	CF, Brodeur	Delete L.22 - 56:	02/05 10:23 AM
Tab 8	CS/SB 1244 by CJ, Gibson; (Similar to H 00913) Statutes of Limitations for Sexual Offenses				
Tab 9	SB 1404 by Jones; (Similar to H 00941) School Counselors				
504780	D	S	CF, Jones	Delete everything after	02/07 02:04 PM
Tab 10	CS/SB 1408 by JU, Perry (CO-INTRODUCERS) Rouson; (Identical to H 01119) Grandparent Visitation Rights				
Tab 11	CS/SB 1798 by CJ, Book; (Similar to CS/H 01453) Sexually Explicit Material				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Garcia, Chair

Senator Book, Vice Chair

MEETING DATE: Tuesday, February 8, 2022

TIME: 9:00—11:00 a.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Garcia, Chair; Senator Book, Vice Chair; Senators Albritton, Brodeur, Harrell, Rouson, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Presentation from the Department of Children and Families and Family First Services of Suncoast - Transition from Eckerd Connects in Pinellas and Pasco Counties			
1	SB 306 Berman (Identical H 93)	Fetal Alcohol Spectrum Disorders; Revising the definition of the term “developmental disability” to include fetal alcohol spectrum disorders; defining the term “fetal alcohol spectrum disorders”; requiring the Agency for Persons with Disabilities to allow certain individuals diagnosed with fetal alcohol spectrum disorders to receive home and community-based services, etc. CF 02/08/2022 AHS AP	
2	SB 652 Cruz	Human Trafficking Public Awareness Signs; Requiring the employer of each athletic venue, entertainment venue, and convention center with a certain capacity to display a human trafficking public awareness sign in a conspicuous location that is clearly visible to the public and employees; providing a noncriminal violation, etc. CF 02/08/2022 ATD AP	
3	CS/SB 654 Judiciary / Cruz (Similar H 905)	Protective Injunctions; Specifying a timeframe in which the clerk of the court must transmit specified documents relating to an injunction for protection against domestic violence to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency, etc. JU 01/31/2022 Fav/CS CF 02/08/2022 RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 8, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 668 Criminal Justice / Cruz (Similar H 109)	Custodial Interrogations of Minors; Providing a presumption of inadmissibility for confessions of certain minors which are made as a result of a custodial interrogation at a place of detention if deceptive tactics are used; specifying circumstances under which the presumption may be rebutted; providing that the state attorney has the burden of proving that such confessions were voluntary, etc. CJ 01/11/2022 Fav/CS CF 02/08/2022 RC	
5	CS/SB 1032 Judiciary / Burgess (Similar H 845)	Guardianships; Authorizing a guardian to sign an order not to resuscitate in certain limited circumstances; designating the "Florida Guardianship Jurisdiction Act"; authorizing courts of this state to communicate with courts of another state relating to certain proceedings; specifying actions that a court of this state may request from, and perform for, a court of another state in certain guardianship proceedings; authorizing a court of this state to decline to exercise its jurisdiction under certain circumstances; authorizing a guardian appointed in this state to petition to transfer the guardianship to another state, etc. JU 01/24/2022 Fav/CS CF 02/08/2022 RC	
6	SB 1040 Brodeur (Compare CS/H 733, H 735, Linked S 1042)	Registry of Persons with Special Needs; Citing this act as the "Protect Our Loved Ones Act"; requiring the Agency for Persons with Disabilities to develop and maintain a database, to be known as the Registry of Persons with Special Needs, for a specified purpose; specifying information the registry may include; requiring the Department of Law Enforcement to provide relevant information from the registry to law enforcement officers upon request through a specified system, etc. CF 02/08/2022 AHS AP	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 8, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1042 Brodeur (Identical H 735, Compare CS/H 733, Linked S 1040)	Public Records/Registry of Persons with Special Needs; Providing an exemption from public records requirements for all records, data, information, correspondence, and communications relating to the enrollment of persons in the registry of persons with special needs; authorizing law enforcement agencies, county emergency management agencies, and local fire departments to further disclose confidential and exempt information under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 02/08/2022 AHS AP	
8	CS/SB 1244 Criminal Justice / Gibson (Similar H 913, Compare S 878)	Statutes of Limitations for Sexual Offenses; Eliminating statutes of limitations periods for prosecution of specified sexual offenses, etc. CJ 02/01/2022 Fav/CS CF 02/08/2022 RC	
9	SB 1404 Jones (Similar H 941)	School Counselors; Citing this act as the "School Counselors Supporting Students Act"; requiring certified school counselors to provide services within the context of a program developed by the Department of Education using a specified framework; prohibiting certified school counselors from performing certain tasks, etc. ED 02/01/2022 Favorable CF 02/08/2022 RC	
10	CS/SB 1408 Judiciary / Perry (Identical H 1119)	Grandparent Visitation Rights; Creating a presumption for maternal or paternal grandparent or stepgrandparent visitation of a child under certain circumstances; providing a burden for overcoming such presumption, etc. JU 01/24/2022 Fav/CS CF 02/08/2022 RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 8, 2022, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1798 Criminal Justice / Book (Similar H 1453)	Sexually Explicit Material; Increasing the monetary damages that an aggrieved person may receive as a result of violations relating to sexual cyberharassment; prohibiting the willful and malicious promotion of certain images without consent; providing criminal penalties; prohibiting a person from obtaining certain images with the intent to promote such images; authorizing law enforcement officers to arrest certain persons without a warrant, etc. CJ 01/25/2022 Fav/CS CF 02/08/2022 AP	

Other Related Meeting Documents

By Senator Berman

31-00481A-22

2022306__

A bill to be entitled
An act relating to fetal alcohol spectrum disorders;
amending s. 393.063, F.S.; revising the definition of
the term "developmental disability" to include fetal
alcohol spectrum disorders; defining the term "fetal
alcohol spectrum disorders"; amending s. 393.065,
F.S.; requiring the Agency for Persons with
Disabilities to allow certain individuals diagnosed
with fetal alcohol spectrum disorders to receive home
and community-based services; amending s. 1002.394,
F.S.; conforming provisions to changes made by the
act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (18) through (46) of section
393.063, Florida Statutes, are redesignated as subsections (19)
through (47), respectively, a new subsection (18) is added to
that section, and subsection (12) of that section is amended, to
read:

393.063 Definitions.—For the purposes of this chapter, the
term:

(12) "Developmental disability" means a disorder or
syndrome that is attributable to intellectual disability,
cerebral palsy, autism, spina bifida, Down syndrome, Phelan-
McDermid syndrome, ~~or~~ Prader-Willi syndrome, or a fetal alcohol
spectrum disorder; that manifests before the age of 18; and that
constitutes a substantial handicap that can reasonably be
expected to continue indefinitely.

31-00481A-22

2022306__

(18) "Fetal alcohol spectrum disorders" means the range of adverse effects that can occur in an individual who is prenatally exposed to alcohol and that may include physical, mental, behavioral, and learning disabilities associated with possible lifelong implications.

Section 2. Present subsections (8) through (11) of section 393.065, Florida Statutes, are redesignated as subsections (9) through (12), respectively, a new subsection (8) is added to that section, and paragraph (b) of present subsection (10) of that section is amended, to read:

393.065 Application and eligibility determination.—

(8) The agency shall allow an individual who is diagnosed with a fetal alcohol spectrum disorder and who meets the eligibility requirements of subsection (1) to receive home and community-based services.

(11) ~~(10)~~

(b) The agency must provide the information required in paragraph (a) in writing to an applicant or his or her parent, legal guardian, or family member along with a written disclosure statement in substantially the following form:

DISCLOSURE STATEMENT

Each program and service has its own eligibility requirements. By providing the information specified in section 393.065(11) (a) ~~393.065(10) (a)~~, Florida Statutes, the agency does not guarantee an applicant's eligibility for or enrollment in any program or service.

Section 3. Paragraph (d) of subsection (2) of section

31-00481A-22

2022306__

1002.394, Florida Statutes, is amended to read:

1002.394 The Family Empowerment Scholarship Program.—

(2) DEFINITIONS.—As used in this section, the term:

(d) "Disability" means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063; Down syndrome, as defined in s. 393.063; an intellectual disability, as defined in s. 393.063; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; an emotional or a behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; Phelan-McDermid syndrome, as defined in s. 393.063; Prader-Willi syndrome, as defined in s. 393.063; spina bifida, as defined in s. 393.063; a fetal alcohol spectrum disorder, as defined in s. 393.063; being a high-risk child, as defined in s. 393.063(24)(a) ~~s. 393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; a hearing impairment, including deafness; a visual impairment, including blindness; traumatic brain injury; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term "hospital or homebound" includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and

31-00481A-22

2022306__

88 who is confined to the home or hospital for more than 6 months.

89 Section 4. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 306

INTRODUCER: Senator Berman and others

SUBJECT: Fetal Alcohol Spectrum Disorders

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 306 amends the definition of “developmental disability” under Florida law to include fetal alcohol spectrum disorders. The bill defines “fetal alcohol spectrum disorders” (FASDs) to mean the range of adverse effects that can occur in an individual who is prenatally exposed to alcohol and that may include types of disabilities associated with possible lifelong implications such as physical, mental, behavioral, and learning.

The bill requires the Agency for Persons with Disabilities (the APD) to allow individuals diagnosed with a FASD, as defined under the bill, to receive home and community-based services under Florida’s iBudget waiver. The bill also adds individuals with FASDs to the list of individuals with disabilities who may request and receive a scholarship through the Family Empowerment Scholarship Program.

The bill is expected to have a significant fiscal impact on the APD. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Agency for Persons with Disabilities

The APD is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver.¹ Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.² The HCBS

¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴ The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁵

Regional Offices

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁶

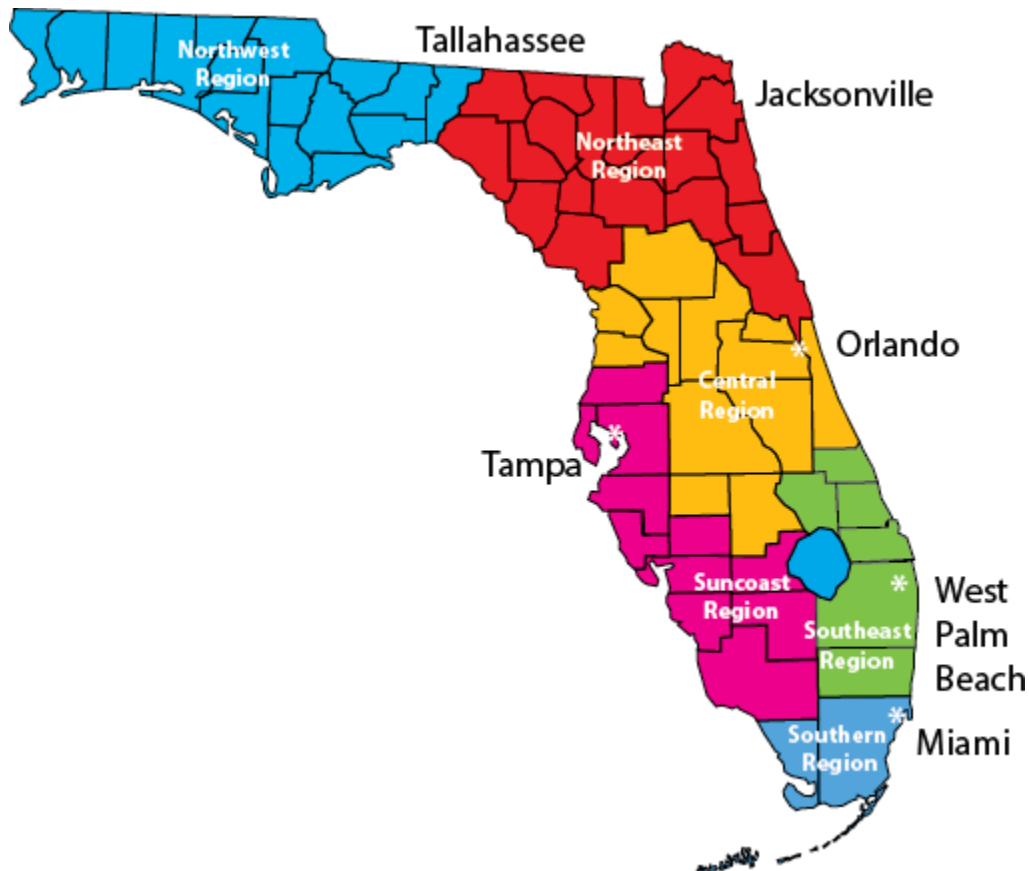
<u>Region</u>	<u>Counties</u>
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union, and Volusia Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota Suncoast Field and Field 8.
Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Fields 9 and 10.
Southern	Miami-Dade and Monroe Field 11.

³ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited February 5, 2022).

⁴ *Id.*; Rule 59G-13.080(1), F.A.C.

⁵ See s. 393.062, F.S.

⁶ The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited February 5, 2022).



iBudget Florida Program

The APD administers Florida's individual budget-based HCBS waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida. Alternatively, they may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁷ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁸

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁹ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹⁰ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

⁷ Section 393.063(25), F.S., defines "intermediate care facility for the developmentally disabled" to mean a residential facility licensed and certified under part VIII of chapter 400, F.S.

⁸ Section 393.0662, F.S.

⁹ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2021-22*, p. 2, November 15, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The Quarterly Report").

¹⁰ *Id.*

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹¹ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹²

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in section 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.¹³ Individuals who are determined to be eligible for the waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.¹⁴ As of November 2021, approximately 22,700 individuals were on the HCBS Waiver wait list.¹⁵

The needs of APD clients are classified into seven categories¹⁶ and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.¹⁷
- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.

¹¹ *Id.*

¹² *Id.*

¹³ Section 393.065(1), F.S.

¹⁴ Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C. for crisis status criteria.

¹⁵ The Quarterly Report at p. 2.

¹⁶ Section 393.065(5), F.S.

¹⁷ *See* s. 393.065(5)(b) for specific criteria.

- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁸

Definition of Developmental Disability

The Legislature added “developmental disability” to the Florida Statutes in 1977,¹⁹ defining the term to mean a disorder or syndrome attributable to, among other things, cerebral palsy, autism, or epilepsy, originating prior to age 18 and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.²⁰

Currently, s. 393.063(12), F.S., defines “developmental disability” to mean:

- A disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermind syndrome, or Prader-Willi syndrome;
- That manifests before the age of 18; and
- That constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Fetal Alcohol Spectrum Disorder

Fetal alcohol spectrum disorders (FASDs) are a set of medical conditions that can occur in a person who was exposed to alcohol before birth.²¹ These effects can include physical problems and problems with behavior and learning.²² Individuals with an FASD often experience a combination of these issues.²³

FASDs are the result of exposure to alcohol before birth.²⁴ Alcohol passes through the mother’s blood and is delivered to the baby via the umbilical cord.²⁵

FASDs encompass a collection of diagnoses which represent the range of effects that can affect a person who was exposed to alcohol before birth. These conditions can affect each person in different ways, and can range from mild to severe.²⁶

A person with a FASD might have:

- Low body weight;
- Poor coordination;
- Hyperactive behavior;
- Difficulty with attention;
- Poor memory;

¹⁸ Section 393.065(5), F.S.

¹⁹ Chapter 77-335, L.O.F.

²⁰ *Id.*

²¹ The Centers for Disease Control and Prevention (the CDC), *Basics About FASDs*, available at <https://www.cdc.gov/ncbddd/fasd/facts.html> (last visited February 4, 2022) (hereinafter cited as “The CDC Guide”).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

- Difficulty in school (especially with math);
- Learning disabilities;
- Speech and language delays;
- Intellectual disability or low IQ;
- Poor reasoning and judgment skills;
- Sleep and sucking problems as a baby;
- Vision or hearing problems;
- Problems with the heart, kidneys, or bones;
- Shorter-than-average height;
- Small head size; and
- Abnormal facial features, such as a smooth ridge between the nose and upper lip (this ridge is called the philtrum).²⁷

Recent prevalence studies estimate that approximately 1 to 5 percent of U.S. first-grade children have FASD.²⁸

Diagnosis

Different FASD diagnoses are based on specific symptoms and include:

- Fetal Alcohol Syndrome (FAS): FAS represents the most involved end of the FASD spectrum. People with FAS have central nervous system (CNS) problems, minor facial features, and growth problems. People with FAS can have problems with learning, memory, attention span, communication, vision, or hearing, or a mix of these problems.
- Alcohol-Related Neurodevelopmental Disorder (ARND): People with ARND might have intellectual disabilities and problems with behavior and learning.
- Alcohol-Related Birth Defects (ARBD): People with ARBD might have problems with the heart, kidneys, or bones or with hearing.
- Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure (ND-PAE): A child or youth with ND-PAE will have problems in three areas:
 - Thinking and memory, where the child may have trouble planning or may forget material he or she has already learned;
 - Behavior problems, such as severe tantrums, mood issues, and difficulty shifting attention from one task to another; and
 - Trouble with day-to-day living, which can include problems with bathing, dressing for the weather, and playing with other children.
 - In addition, to be diagnosed with ND-PAE, the mother of the child must have consumed more than minimal levels of alcohol before the child's birth, which APA defines as more than 13 alcoholic drinks per month of pregnancy (that is, any 30-day period of pregnancy) or more than 2 alcoholic drinks in one sitting.²⁹

²⁷ *Id.*

²⁸ The National Institute on Alcohol Abuse and Alcoholism, *Fetal Alcohol Spectrum Disorders*, available at <https://www.niaaa.nih.gov/fetal-alcohol-spectrum-disorders> (last visited February 5, 2022).

²⁹ The CDC Guide.

Treatment

No cure exists for FASDs; however research shows that early intervention treatment services may improve a child's development.³⁰

Several treatment options exist, including medication to help with some symptoms, behavior and education therapy, parent training, and other alternative approaches. Treatment plans often include close monitoring, follow-ups, and changes as needed.³¹

Also, "protective factors" can help reduce the effects of FASDs and help people with these conditions reach their full potential.³² Protective factors include:

- Diagnosis before 6 years of age;
- Loving, nurturing, and stable home environment that is absent of violence during the school years; and
- Involvement in special education and social services.³³

Family Empowerment Scholarship Program

The Family Empowerment Scholarship (FES) program was established in 2019 to provide educational options to eligible children of families with limited financial resources.³⁴ A student who receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level.³⁵

To be eligible for an award under the FES program, a student must meet the following criteria:³⁶

- The student is:
 - On the direct certification list³⁷ pursuant to law or the student's household income level does not exceed 300 percent of the federal poverty level; or
 - Currently placed, or during the previous fiscal year was placed, in foster care or in out-of-home care.³⁸
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance at a Florida public school.³⁹
- The parent has obtained acceptance for admission of the student to a private school that is eligible for the program and the parent has requested a scholarship from the Department of Education at least 60 days before the date of the first scholarship payment.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Section 6, ch. 2019-21, L.O.F.

³⁵ Section 1002.394(5)(a), F.S.

³⁶ Section 1002.394(3), F.S.

³⁷ Pursuant to s. 1002.395(2)(c), F.S.

³⁸ Pursuant to ch. 39, F.S.

³⁹ However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to a parent's permanent change of station orders or a foster child is exempt from the prior public school attendance requirement.

Additionally, a sibling of a student who is participating in the FES program is eligible for a scholarship if the student resides in the same household as the sibling.⁴⁰

A parent of a student with a disability may request and receive from the state a scholarship if the student:

- Is a Florida resident;
- Is 3 or 4 years of age on or before September 1 of the year in which the student applies for program participation or is eligible to enroll in kindergarten through grade 12 in a public school in Florida;
- Has a disability; and
- Is the subject of an IEP written in accordance with rules of the State Board of Education or with the applicable rules of another state or has received a diagnosis of a disability from a physician who is licensed under ch. 458, F.S., or ch. 459, F.S., a psychologist who is licensed under ch. 490, F.S., or a physician who holds an active license issued by another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.⁴¹

The definition of “disability” as defined in s. 1002.394(2)(d), F.S., includes a 3- or 4-year-old child or, for a student in kindergarten to grade 12:

- Autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association;
- Cerebral palsy, as defined in s. 393.063, F.S.;
- Down syndrome, as defined in s. 393.063, F.S.;
- An intellectual disability, as defined in s. 393.063, F.S.;
- A speech impairment;
- A language impairment;
- An orthopedic impairment;
- An other health impairment;
- An emotional or a behavioral disability;
- A specific learning disability, including, but not limited to:
 - Dyslexia,
 - Dyscalculia, or
 - Developmental aphasia;
- Phelan-McDermid syndrome, as defined in s. 393.063, F.S.;
- Prader-Willi syndrome, as defined in s. 393.063, F.S.;
- Spina bifida, as defined in s. 393.063, F.S.;
- Being a high-risk child, as defined in s. 393.063(23)(a), F.S.;
- Muscular dystrophy;
- Williams syndrome;
- Rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders;
- Anaphylaxis;
- A hearing impairment, including deafness;

⁴⁰ Section 1002.394(3), F.S.

⁴¹ Section 1002.394(3)(b), F.S.

- A visual impairment, including blindness;
- Traumatic brain injury;
- Being hospital or homebound;⁴² or
- Identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts.⁴³

III. Effect of Proposed Changes:

The bill amends s. 393.063, F.S., expanding the definition of “developmental disability” and APD eligibility criteria to include FASD. The bill defines “fetal alcohol spectrum disorders” (FASDs) to mean the range of adverse effects that can occur in an individual who is prenatally exposed to alcohol and that may include the following types of disabilities associated with possible lifelong implications:

- Physical;
- Mental;
- Behavioral; and
- Learning.

The bill also amends s. 393.065, F.S., to allow for the automatic enrollment of individuals with FASD onto the HCBS Waiver. Therefore, under the bill, individuals with FASD will bypass the waiting list, and the APD must allow individuals diagnosed with a FASD who meet the relevant eligibility criteria to receive HCBS Waiver services. It is estimated that approximately 2,200 individuals are born in Florida each year with FASD that would potentially meet the level of care requirement for waiver services with an additional 74,800 existing population.⁴⁴

The bill also adds FASD to the list of disabilities which entitles an individual to request and receive a scholarship under the Family Empowerment Scholarship Program.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

⁴² The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months. Section 1002.394(3)(d), F.S.

⁴³ Section 1002.394(3)(b), F.S.

⁴⁴ The APD, *Agency Analysis of SB 306*, p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The APD Analysis”).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The APD anticipates that approximately 74,800 individuals have FASD in Florida.⁴⁵ The estimated cost of enrollment per individual is \$38,000.⁴⁶ Thus, the anticipated initial impact of the bill is approximately \$2,842,400,000.⁴⁷ Assuming that 1 percent⁴⁸ of babies born annually have FASD, the APD anticipates that the annual recurring cost of the bill is approximately \$83,600,000.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 393.063 393.065, and 1002.394 of the Florida Statutes.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ The CDC estimates that approximately 1 to 5% of newborns are born with FASD.

⁴⁹ The APD Analysis, p. 4.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



160078

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Children, Families, and Elder Affairs (Berman)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 89

and insert:

Section 2. Paragraph (d) of subsection (2) of section
1002.394, Florida Statutes, is amended to read:

1002.394 The Family Empowerment Scholarship Program.—

(2) DEFINITIONS.—As used in this section, the term:

(d) "Disability" means, for a 3- or 4-year-old child or for
a student in kindergarten to grade 12, autism spectrum disorder,



160078

as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063; Down syndrome, as defined in s. 393.063; an intellectual disability, as defined in s. 393.063; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; an emotional or a behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; Phelan-McDermid syndrome, as defined in s. 393.063; Prader-Willi syndrome, as defined in s. 393.063; spina bifida, as defined in s. 393.063; a fetal alcohol spectrum disorder, as defined in s. 393.063; being a high-risk child, as defined in s. 393.063(24)(a) ~~s. 393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; a hearing impairment, including deafness; a visual impairment, including blindness; traumatic brain injury; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term "hospital or homebound" includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.

Section 3. This act shall take effect July 1, 2023.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 6 - 10



160078

40 and insert:
41 alcohol spectrum disorders"; amending s. 1002.394,

By Senator Cruz

18-00415-22

2022652__

A bill to be entitled
An act relating to human trafficking public awareness signs; amending s. 787.29, F.S.; requiring the employer of each athletic venue, entertainment venue, and convention center with a certain capacity to display a human trafficking public awareness sign in a conspicuous location that is clearly visible to the public and employees; providing a noncriminal violation; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 787.29, Florida Statutes, is amended to read:

787.29 Human trafficking public awareness signs.—

(1) The Department of Transportation shall display a public awareness sign developed under this section ~~subsection (4)~~ in every rest area, turnpike service plaza, weigh station, primary airport, passenger rail station, and welcome center in the state which is open to the public.

(2) Emergency rooms shall display a public awareness sign developed under this section ~~subsection (4)~~ in the emergency rooms at general acute care hospitals.

(3) (a) The employer at each of the following establishments shall display a public awareness sign developed under this section ~~subsection (4)~~ in a conspicuous location that is clearly visible to the public and employees of the establishment:

1. (a) A strip club or other adult entertainment

18-00415-22

2022652__

establishment.

2.~~(b)~~ A business or establishment that offers massage or bodywork services for compensation and that is not owned by a health care practitioner regulated pursuant to chapter 456 and defined in s. 456.001.

3. Each athletic venue, entertainment venue, and convention center capable of accommodating 5,000 or more persons.

(b) A county commission may adopt an ordinance to enforce this subsection. A violation of this subsection is a noncriminal violation and is punishable only by a fine as provided in s. 775.083.

(4) The required public awareness sign must be at least 8.5 inches by 11 inches in size, must be printed in at least a 16-point type, and must state substantially the following in English and Spanish:

"If you or someone you know is being forced to engage in an activity and cannot leave—whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law."

~~(5) The county commission may adopt an ordinance to enforce subsection (3). A violation of subsection (3) is a noncriminal violation and punishable by a fine only as provided in s.~~

18-00415-22

2022652__

59 ~~775.083.~~

60 Section 2. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 652

INTRODUCER: Senator Cruz

SUBJECT: Human Trafficking Public Awareness Signs

DATE: February 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Berger	Cox	CF	Pre-meeting
2. _____	_____	ATD	_____
3. _____	_____	AP	_____

I. Summary:

SB 652 seeks to heighten public awareness regarding human trafficking in Florida. The bill amends s. 787.29, F.S., requiring an employer of an athletic venue, entertainment venue, or a convention center with the capacity to hold 5,000 or more people to display human trafficking awareness signs which are clearly visible to employees and guests of the establishment. The signage must be placed in a conspicuous location and comply with the requirements under s. 787.29(4), F.S.

Section 787.29(3)(a) and (b), F.S., are redesignated as s. 787.29(3)(a)1. and 2, and the bill relocates the provision in s. 787.29(5), F.S., relating to penalties for a violation of the subsection, to s. 787.29(3)(b), F.S.

The bill has a minimal negative, but indeterminate, fiscal impact on state and local governments, and businesses required to display human trafficking awareness signs. See Section V. Fiscal Impact Statement.

This bill shall take effect July 1, 2022.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Young children, teenagers, and adults are all victims of human trafficking, who are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ Human trafficking is the third-largest international crime

¹ Section 787.06(1)(a), F.S

industry, generating a profit of an estimated \$150 billion every year.² In 2016, there were an estimated 40.3 million victims of human trafficking.³

Since 2007, there were 73,946 human trafficking cases reported to the National Human Trafficking Hotline (Hotline).⁴ In 2020, the Hotline and BeFree Textline recorded a total of 16,658 human trafficking victims identified in the U.S. alone.⁵ In 2020, the Hotline received a total of 51,667 reports nationwide.⁶

Forced labor and sex trafficking are the most common types of human trafficking. Labor trafficking is a form of modern-day slavery in which individuals perform labor or services through force, fraud, or coercion.⁷ Sex trafficking “occurs when someone uses force, fraud or coercion to cause a commercial sex act with an adult or causes a minor to commit a commercial sex act.”⁸ Sex trafficking accounted for 7,648 of the reported cases of human trafficking in 2020.⁹

Traffickers coerce victims into sex trafficking in numerous ways. Some victims may be forced into prostitution by an intimate partner while others may be recruited with a false job offer.¹⁰ Fake massage businesses, truck stops, and hotels and motels are all venues used in sex trafficking operations.¹¹

In an effort to combat human trafficking in the United States, Congress passed the Trafficking Victims Protection Act (Act) in 2000 which established several methods of prosecuting traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The Act contains severe penalties and mandated restitution for victims of human trafficking.¹²

² Human Rights First, *Human Trafficking by the Numbers*. July 31, 2019, available at [Human Trafficking by the Numbers | Human Rights First](#) (last visited Feb. 4, 2022).

³ International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited February 4, 2022).

⁴ Polaris, *Resource: U.S. National Human Trafficking Hotline Statistics*, Jan. 1, 2022, available at [U.S. National Human Trafficking Hotline Statistics | Polaris \(polarisproject.org\)](#) (last visited Feb. 4, 2022).

⁵ Polaris, *Human Trafficking Trends in 2020*, available at <https://polarisproject.org/wp-content/uploads/2022/01/Human-Trafficking-Trends-in-2020-by-Polaris.pdf> (Last visited February 4, 2022).

⁶ The Hotline, *2020 National Hotline Annual Report*, Dec. 2021, available at [2020 National Hotline Annual Report | National Human Trafficking Hotline](#) (last visited February 1, 2022).

⁷ National Trafficking Hotline, *Labor Trafficking*, available at <https://humantraffickinghotline.org/type-trafficking/labor-trafficking> (last visited February 4, 2022).

⁸ Sharedhope International, *What is Sex Trafficking*, available at <https://sharedhope.org/the-problem/what-is-sex-trafficking/> (last visited February 4, 2022).

⁹ Polaris, *Human Trafficking Trends in 2020*, available at <https://polarisproject.org/wp-content/uploads/2022/01/Human-Trafficking-Trends-in-2020-by-Polaris.pdf> (last visited February 4, 2022).

¹⁰ *Id.*

¹¹ Polaris, *Sex Trafficking in the U.S.: A Closer Look at U.S. Citizen Victims*, available at <https://polarisproject.org/wp-content/uploads/2019/09/us-citizen-sex-trafficking.pdf> (last visited February 4, 2022).

¹² Pub. L. No. 106-386 (2000).

Human Trafficking in Florida

Florida ranks third in the nation for reported cases of human trafficking.¹³ In 2020, the Hotline had 2,539 human trafficking cases reported in Florida.¹⁴ Children are often those targeted in trafficking operations, with 12-14 being the average age that a trafficked victim is first used for commercial sex.¹⁵

Florida law defines “human trafficking” to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.¹⁶ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking commits the crime of human trafficking.¹⁷ Such an offense is punishable as a first degree felony,¹⁸ unless the person being sex trafficked is a child under the age of 18, mentally defective, or mentally incapacitated, then such an offense is punishable as a life felony.¹⁹

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking due to the fact that many traffickers are prosecuted for other crimes.²⁰ Additionally, prosecutors often have difficulty proving the relationship at issue is that of human trafficking or when dealing with a victim who might be unwilling to testify against his or her trafficker in court.²¹

Human trafficking cases are often hidden operations that require law enforcement agencies to engage in intricate investigations. In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.²² Similarly, in January 2019, a 36-year-old male was arrested in Tallahassee on charges of prostitution and sex

¹³ National Human Trafficking Hotline, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited February 4, 2022).

¹⁴ National Human Trafficking Hotline, *National Human Trafficking Hotline Data Report: Florida State Report: 1/1/2020-12/31/2020*, available at [Florida State Report For 2020.docx \(humantraffickinghotline.org\)](https://www.humantraffickinghotline.org/Florida-State-Report-For-2020.docx) (last visited February 4, 2022).

¹⁵ Office of the Attorney General: Statewide Council on Human Trafficking, *About Human Trafficking*, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited February 4, 2022).

¹⁶ Section 787.06(2)(d), F.S.

¹⁷ Section 787.06(3), F.S.

¹⁸ A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁹ Section 787.06(3)(a)-(g), F.S. A life felony is punishable by a state prison term for life, by a term of imprisonment not exceeding 40 years, a fine not exceeding \$15,000, or both. Sections 775.082 and 775.083, F.S.

²⁰ Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, (Jan. 27, 2019) available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-humantrafficking-alive-and-well-big-bend/2648630002/> (last visited February 4, 2022).

²¹ *Id.*

²² Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018) available at <https://www.clickorlando.com/2018/12/04/orlando-area-doctor-among-103-arrested-in-polk-county-sex-sting-sheriff-says/> (last visited February 4, 2022).

trafficking involving a 14-year old girl. The male was already facing charges for sex trafficking a child in 2014.²³

Statewide Council on Human Trafficking

In 2014, the Statewide Council on Human Trafficking (Council) was created within the Department of Legal Affairs.²⁴ The purpose of the Council is to enhance the development and coordination of law enforcement and social services responses to combat commercial sexual exploitation and to support victims.²⁵ The fifteen member Council is chaired by the state Attorney General.²⁶ The Council's duties include:

- Developing recommendations for comprehensive programs and services for human trafficking victims;
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses;
- Holding an annual statewide policy summit;
- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county; and
- Developing policy recommendations that advance the duties of the Council and further the efforts to combat human trafficking in Florida.²⁷

Human Trafficking and Tourism

Human trafficking is extremely prevalent during sporting and entertainment events due to excess tourism attracted by large crowds.²⁸ Traffickers often use the influx of traffic to camouflage global exploitation rings. In recent years, global media have criticized major sporting events for being used as human trafficking hotbeds.²⁹ The Miami-Dade State Attorney reports that 47 traffickers were arrested and 22 survivors identified at the 2020 Super Bowl in Miami.³⁰ Large events such as the Super Bowl, World Series, World Cup, concerts, and collegiate sports inherently attract the largest coordinated efforts of movement in young victims, who are both male and female between the ages of 13-16, within the U.S.³¹

²³ The Florida Bar, *Measure To Strengthen Human Trafficking Laws Goes To The Governor*, available at <https://www.floridabar.org/the-florida-bar-news/measure-to-strengthen-human-trafficking-laws-goes-to-the-governor> (last visited February 4, 2022).

²⁴ Ch. 2014-161, s. 9, Laws of Fla. Also, see Florida Office of the Attorney General, *Statewide Council on Human Trafficking*, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited on February 4, 2022).

²⁵ Section 16.617(1), F.S.

²⁶ Section 16.617(2), F.S.

²⁷ Section 16.617(4), F.S.

²⁸ It's a Penalty, *The Power of Sporting Events in the Fight Against Human Trafficking*, available at <https://itsapenalty.org/2021/08/24/power-of-sporting-events/> (last visited February 4, 2022).

²⁹ *Id.*

³⁰ *Id.*

³¹ ACAMS TODAY, *Human Trafficking and Major Sporting Events: The Dark Side of the Super Bowl*, available at <https://www.acamstoday.org/human-trafficking-and-major-sporting-events-the-dark-side-of-the-super-bowl/> (last visited February 4, 2022).

In 2019, approximately 131.42 million tourists visited Florida.³² The influx of both international and domestic travelers are expected to increase as a majority of COVID-19 related restrictions are being lifted.

Signs

Increasing effective public awareness and outreach efforts about the risks and signs of human trafficking is an important aspect of any anti-trafficking strategy, and can lead to the detection of human trafficking cases and ultimately help prevent human trafficking.³³ Human trafficking awareness training provides an important foundation for stakeholders to recognize the indicators of human trafficking and learn how to appropriately respond.³⁴

Currently, Florida requires the Department of Transportation to display human trafficking public awareness signs in specified locations, such as rest areas, turnpike service plazas, and weigh stations.³⁵ Such signs are also required to be displayed at the following locations:

- Emergency rooms;³⁶
- Strip clubs or other adult entertainment establishments;³⁷ and
- A business or establishment that offers massage or bodywork services for compensation in certain circumstances.³⁸

Section 787.29(4), F.S. requires that the public awareness signs must be:

- Be at least 8.5 inches by 11 inches in size;
- Be printed in at least a 16-point type; and
- State substantially the following in English and Spanish:

“If you or someone you know is being forced to engage in an activity and cannot leave-whether it is prostitution, housework, farm work, retail work, restaurant work, or any other activity-call the National Human Trafficking Resource Center at 1-888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.”³⁹

Florida law requires public lodging establishments to post human trafficking awareness signs that meet the same requirements, except that the size of the sign must be larger and it must include any other language predominantly spoken in the area in certain circumstances.⁴⁰ A violation of the provision subjects a public lodging establishment to a fine of \$2,000 per day

³²WUSF, *International visitors are returning to Florida, leading to a tourism surge*, available at <https://wusfnews.wusf.usf.edu/economy-business/2021-11-16/international-visitors-returning-to-florida-leading-to-tourism-surge> (last visited February 4, 2022).

³³ The United States Department of State, *Public Awareness & Training*, available at <https://www.state.gov/humantrafficking-public-awareness-training/> (last visited February 4, 2022).

³⁴ *Id.*

³⁵ Section 787.29(1), F.S.

³⁶ Section 787.29(2), F.S.

³⁷ Section 787.29(3)(a), F.S.

³⁸ Section 787.29(3)(b), F.S.

³⁹ Section 787.29(4), F.S.

⁴⁰ Section 509.096(1)(c), F.S.

which must be remitted to the Florida Alliance to End Human Trafficking, the direct-support organization⁴¹ established under s. 16.618, F.S., unless certain written assurances are provided by the public lodging establishments to the Department of Business and Professional Regulation within a specified time.⁴²

Florida does not currently require public awareness signs related to human trafficking to be displayed in entertainment or sports venues.

III. Effect of Proposed Changes:

The bill amends s. 787.29, F.S., to require the employer of each athletic venue, entertainment venue, and convention center with the capacity to hold 5,000 or more people to display human trafficking awareness signs in accordance with certain requirements, including to:

- Be placed in a conspicuous location;
- Be clearly visible to the public and venue employees; and
- Meet the requirements under s. 787.29(4), F.S.

The bill relocates the provision in s. 787.29(5), F.S., to s. 787.29(3)(b), F.S., which classifies a violation of this subsection as a noncriminal violation and provides that it is punishable only by a fine as provided in s. 775.083, F.S.

This bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁴¹ A direct-support organization (DSO) is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the contract with the agency the DSO was created to support. Some examples of other DSOs may be found in ss. 14.29(9)(a), 267.1732, and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2021), Rule 10.720(1)(b) and (d), available at https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited February 4, 2022).

⁴² *Id.*

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certain venues will incur minimal expenses in posting the required signage. A civil penalty of \$500 for a noncriminal violation shall be imposed upon an employer who knowingly fails to comply with the provisions of the bill.

C. Government Sector Impact:

To the extent that certain venues which fall within the scope of the bill are owned by a local government, they will incur minimal expenses in posting the required signage. Further, costs incurred to ensure compliance by specified venues should be offset by fines imposed for violations of the new provision under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 787.29 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



953820

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Children, Families, and Elder Affairs (Cruz)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 36 - 37

and insert:

center capable of accommodating 5,000 or more persons. For
purposes of this subparagraph, "entertainment venue" means any
public facility that offers services or holds events,
performances, or activities for enjoyment or amusement and is
used for commercial or industrial purposes which does not
include overnight lodging or casinos but may include performing



953820

arts centers, arenas, racetracks, coliseums, auditoriums, theme
or amusement parks, museums, cultural complexes, or other
similar facilities.

(b) A county commission may adopt an ordinance to enforce
===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 8 - 9

and insert:

public and employees; defining term; providing a
noncriminal violation; making technical changes;
providing an

By the Committee on Judiciary; and Senators Cruz, Gibson, and Jones

590-02513-22

2022654c1

1 A bill to be entitled
2 An act relating to protective injunctions; amending s.
3 741.30, F.S.; deleting an obsolete date; specifying a
4 timeframe in which the clerk of the court must
5 transmit specified documents relating to an injunction
6 for protection against domestic violence to the
7 appropriate local sheriff or law enforcement agency;
8 providing for the electronic transmission of certain
9 documents rather than by facsimile; authorizing clerks
10 of the court to provide such documents by facsimile,
11 hand delivery, or certified or registered mail under
12 certain circumstances; providing that electronically
13 submitted copies of injunctions must be served in the
14 same manner as certified copies; making conforming and
15 technical changes; amending ss. 784.046 and 784.0485,
16 F.S.; specifying a timeframe in which the clerk of the
17 court must transmit specified documents relating to
18 injunctions for protection against repeat violence,
19 sexual violence, or dating violence and against
20 stalking, respectively, to the appropriate local
21 sheriff or law enforcement agency; providing for the
22 electronic transmission of certain documents rather
23 than by facsimile; authorizing clerks of the court to
24 provide such documents by facsimile, hand delivery, or
25 certified or registered mail under certain
26 circumstances; providing that electronically submitted
27 copies of injunctions must be served in the same
28 manner as certified copies; making conforming and
29 technical changes; providing an effective date.

590-02513-22

2022654c1

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) and subsection (8) of section 741.30, Florida Statutes, are amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(2)(a) Notwithstanding any other ~~provision of~~ law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited ~~effective October 1, 2002~~. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of \$40 per petition. The request for reimbursement must ~~shall~~ be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may ~~shall~~ not exceed \$20.

(8)(a)1. Within 24 hours after the court issues an injunction for protection against domestic violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a

590-02513-22

2022654c1

law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may provide copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of an injunction must be that has been certified by the clerk of the court, and the electronic this facsimile copy must ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic a facsimile copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section must ~~shall~~ use service and verification

590-02513-22

2022654c1

88 procedures consistent with those of the sheriff.

89 2. When an injunction is issued, if the petitioner requests
90 the assistance of a law enforcement agency, the court may order
91 that an officer from the appropriate law enforcement agency
92 accompany the petitioner and assist in placing the petitioner in
93 possession of the dwelling or residence, or otherwise assist in
94 the execution or service of the injunction. A law enforcement
95 officer must ~~shall~~ accept a copy of an injunction for protection
96 against domestic violence, certified by the clerk of the court,
97 from the petitioner and immediately serve it upon a respondent
98 who has been located but not yet served.

99 3. All orders issued, changed, continued, extended, or
100 vacated subsequent to the original service of documents
101 enumerated under subparagraph 1. must, ~~shall~~ be certified by the
102 clerk of the court and delivered to the parties at the time of
103 the entry of the order. The parties may acknowledge receipt of
104 such order in writing on the face of the original order. In the
105 event a party fails or refuses to acknowledge the receipt of a
106 certified copy of an order, the clerk shall note on the original
107 order that service was effected. If delivery at the hearing is
108 not possible, the clerk shall mail certified copies of the order
109 to the parties at the last known address of each party. Service
110 by mail is complete upon mailing. When an order is served
111 pursuant to this subsection, the clerk shall prepare a written
112 certification to be placed in the court file specifying the
113 time, date, and method of service and shall notify the sheriff.

114
115 If the respondent has been served previously with the temporary
116 injunction and has failed to appear at the initial hearing on

590-02513-22

2022654c1

the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) ~~There shall be created~~ A Domestic and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may provide copies to the sheriff's office by facsimile, hand delivery, or certified or registered mail. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically

590-02513-22

2022654c1

146 ~~transmit forward~~ the written proof of service of process to the
147 sheriff with jurisdiction over the residence of the petitioner.

148 3. Within 24 hours after the sheriff receives a certified
149 copy of the injunction for protection against domestic violence,
150 the sheriff must make information relating to the injunction
151 available to other law enforcement agencies by electronically
152 transmitting such information to the department.

153 4. Within 24 hours after the sheriff or other law
154 enforcement officer has made service upon the respondent and the
155 sheriff has been so notified, the sheriff must make information
156 relating to the service available to other law enforcement
157 agencies by electronically transmitting such information to the
158 department.

159 5. Subject to available funding, the Florida Association of
160 Court Clerks and Comptrollers shall develop an automated process
161 by which a petitioner may request notification of service of the
162 injunction for protection against domestic violence and other
163 court actions related to the injunction for protection. The
164 automated notice must ~~shall~~ be made within 12 hours after the
165 sheriff or other law enforcement officer serves the injunction
166 upon the respondent. The notification must include, at a
167 minimum, the date, time, and location where the injunction for
168 protection against domestic violence was served. The Florida
169 Association of Court Clerks and Comptrollers may apply for any
170 available grants to fund the development of the automated
171 process.

172 6. Within 24 hours after an injunction for protection
173 against domestic violence is vacated, terminated, or otherwise
174 rendered no longer effective by ruling of the court, the clerk

590-02513-22

2022654c1

of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may furnish copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction must be that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile copy must~~ ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of

590-02513-22

2022654c1

the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court ~~is~~ shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of law to the contrary~~, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. A ~~No~~ person may not ~~shall be~~ ~~authorized or permitted to~~ serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) ~~There shall be created~~ A Domestic, Dating, Sexual, and

590-02513-22

2022654c1

233 Repeat Violence Injunction Statewide Verification System is
234 created within the Department of Law Enforcement. The department
235 shall establish, implement, and maintain a statewide
236 communication system capable of electronically transmitting
237 information to and between criminal justice agencies relating to
238 domestic violence injunctions, dating violence injunctions,
239 sexual violence injunctions, and repeat violence injunctions
240 issued by the courts throughout the state. Such information must
241 include, but is not limited to, information as to the existence
242 and status of any injunction for verification purposes.

243 (c)1. Within 24 hours after the court issues an injunction
244 for protection against repeat violence, sexual violence, or
245 dating violence or changes or vacates an injunction for
246 protection against repeat violence, sexual violence, or dating
247 violence, the clerk of the court must electronically transmit
248 ~~forward~~ a copy of the injunction to the sheriff with
249 jurisdiction over the residence of the petitioner.

250 2. Within 24 hours after service of process of an
251 injunction for protection against repeat violence, sexual
252 violence, or dating violence upon a respondent, the law
253 enforcement officer must electronically transmit ~~forward~~ the
254 written proof of service of process to the sheriff with
255 jurisdiction over the residence of the petitioner.

256 3. Within 24 hours after the sheriff receives a certified
257 copy of the injunction for protection against repeat violence,
258 sexual violence, or dating violence, the sheriff must make
259 information relating to the injunction available to other law
260 enforcement agencies by electronically transmitting such
261 information to the department.

590-02513-22

2022654c1

262 4. Within 24 hours after the sheriff or other law
263 enforcement officer has made service upon the respondent and the
264 sheriff has been so notified, the sheriff must make information
265 relating to the service available to other law enforcement
266 agencies by electronically transmitting such information to the
267 department.

268 5. Subject to available funding, the Florida Association of
269 Court Clerks and Comptrollers shall develop an automated process
270 by which a petitioner may request notification of service of the
271 injunction for protection against repeat violence, sexual
272 violence, or dating violence and other court actions related to
273 the injunction for protection. The automated notice must ~~shall~~
274 be made within 12 hours after the sheriff or other law
275 enforcement officer serves the injunction upon the respondent.
276 The notification must include, at a minimum, the date, time, and
277 location where the injunction for protection against repeat
278 violence, sexual violence, or dating violence was served. The
279 Florida Association of Court Clerks and Comptrollers may apply
280 for any available grants to fund the development of the
281 automated process.

282 6. Within 24 hours after an injunction for protection
283 against repeat violence, sexual violence, or dating violence is
284 lifted, terminated, or otherwise rendered no longer effective by
285 ruling of the court, the clerk of the court must notify the
286 sheriff or local law enforcement agency receiving original
287 notification of the injunction as provided in subparagraph 2.
288 That agency shall, within 24 hours after receiving such
289 notification from the clerk of the court, notify the department
290 of such action of the court.

590-02513-22

2022654c1

291 Section 3. Subsection (8) of section 784.0485, Florida
292 Statutes, is amended to read:

293 784.0485 Stalking; injunction; powers and duties of court
294 and clerk; petition; notice and hearing; temporary injunction;
295 issuance of injunction; statewide verification system;
296 enforcement.—

297 (8)(a)1. Within 24 hours after the court issues an
298 injunction for protection against stalking, the clerk of the
299 court shall electronically transmit ~~furnish~~ a copy of the
300 petition, notice of hearing, and temporary injunction, if any,
301 to the sheriff or a law enforcement agency of the county where
302 the respondent resides or can be found, who shall serve it upon
303 the respondent as soon thereafter as possible on any day of the
304 week and at any time of the day or night. If there is an
305 Internet outage or any other significant disruption in network
306 connectivity which would delay service by more than 24 hours,
307 the clerk of the court may furnish copies to the sheriff's
308 office or law enforcement agency by facsimile, hand delivery, or
309 certified or registered mail. An electronic ~~When requested by~~
310 ~~the sheriff, the clerk of the court may transmit a facsimile~~
311 copy of an injunction must be ~~that has been~~ certified by the
312 clerk of the court, and the electronic ~~this facsimile~~ copy must
313 ~~may~~ be served in the same manner as a certified copy. Upon
314 receiving an electronic ~~a facsimile~~ copy of the injunction, the
315 sheriff must verify receipt with the sender before attempting to
316 serve it on the respondent. In addition, if the sheriff is in
317 possession of an injunction for protection that has been
318 certified by the clerk of the court, the sheriff may
319 electronically transmit a ~~facsimile~~ copy of that injunction to a

590-02513-22

2022654c1

320 law enforcement officer who shall serve it in the same manner as
321 a certified copy. The clerk of the court shall furnish to the
322 sheriff such information concerning the respondent's physical
323 description and location as is required by the Department of Law
324 Enforcement to comply with the verification procedures set forth
325 in this section. Notwithstanding any other law, the chief judge
326 of each circuit, in consultation with the appropriate sheriff,
327 may authorize a law enforcement agency within the jurisdiction
328 to effect service. A law enforcement agency serving injunctions
329 pursuant to this section must ~~shall~~ use service and verification
330 procedures consistent with those of the sheriff.

331 2. If an injunction is issued and the petitioner requests
332 the assistance of a law enforcement agency, the court may order
333 that an officer from the appropriate law enforcement agency
334 accompany the petitioner to assist in the execution or service
335 of the injunction. A law enforcement officer must ~~shall~~ accept a
336 copy of an injunction for protection against stalking, certified
337 by the clerk of the court, from the petitioner and immediately
338 serve it upon a respondent who has been located but not yet
339 served.

340 3. An order issued, changed, continued, extended, or
341 vacated subsequent to the original service of documents
342 enumerated under subparagraph 1. must ~~shall~~ be certified by the
343 clerk of the court and delivered to the parties at the time of
344 the entry of the order. The parties may acknowledge receipt of
345 such order in writing on the face of the original order. If a
346 party fails or refuses to acknowledge the receipt of a certified
347 copy of an order, the clerk shall note on the original order
348 that service was effected. If delivery at the hearing is not

590-02513-22

2022654c1

possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must electronically transmit ~~forward~~ a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must electronically transmit ~~forward~~ the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law

590-02513-22

2022654c1

378 Enforcement.

379 4. Within 24 hours after the sheriff or other law
380 enforcement officer has made service upon the respondent and the
381 sheriff has been so notified, the sheriff must make information
382 relating to the service available to other law enforcement
383 agencies by electronically transmitting such information to the
384 Department of Law Enforcement.

385 5. Within 24 hours after an injunction for protection
386 against stalking is vacated, terminated, or otherwise rendered
387 no longer effective by ruling of the court, the clerk of the
388 court must notify the sheriff receiving original notification of
389 the injunction as provided in subparagraph 2. That agency shall,
390 within 24 hours after receiving such notification from the clerk
391 of the court, notify the Department of Law Enforcement of such
392 action of the court.

393 Section 4. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 654

INTRODUCER: Judiciary Committee; and Senator Cruz, and others

SUBJECT: Protective Injunctions

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 654 requires clerks of court to transmit and sheriffs to accept electronic copies of documents relating to proceedings for an injunction for protection against domestic violence and similar injunction proceedings. Under current law, a clerk of court may not provide electronic copies of the documents to a sheriff unless they are requested by the sheriff.

The bill does not change the requirements of existing law that the clerk forward the documents, including injunctions for protection against domestic violence and similar injunctions, to the sheriff within 24 hours after issuance. These documents are then to be served by the sheriff on the appropriate party to the injunction proceeding as under existing law.

By requiring a sheriff to accept electronic copies of domestic violence injunctions and similar injunctions, the bill will likely enable sheriffs to serve the injunctions on the respondents more quickly after the injunctions are issued by the court.

The fiscal impact will vary by county depending on their existing resources and procedures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerks of the Court

The Clerk of the Circuit Court is a constitutional officer elected within each of Florida's 67 counties. The clerk generally serves as both the clerk of the courts as well as the clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.¹ Florida law provides that the clerk of the circuit court is required to be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. The Clerk is required to record all such instruments in one general series called 'Official Records,' which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk's supervision."²

Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member³ who is either the victim of domestic violence⁴ or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence⁵ or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
 - A person who is the victim of dating violence⁶ and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
 - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or

¹ FLA. CONST. Art. V, s. 16. The Florida Constitution specifically provides that two roles may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Additionally, there may be a clerk of the county court if authorized by general or special law.

² Section 28.222(1) & (2), F.S.

³ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 741.28(3), F.S.

⁴ "Domestic violence" is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

⁵ "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

⁶ "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

- The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence⁷ or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
 - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
 - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking⁸ or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.⁹

Once an injunction is ordered by a court, clerk of the court is required to furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the law enforcement agency of the county where the respondent resides or can be found. For an injunction for protection against dating violence, the clerk must also furnish a copy of any financial affidavit, as well as any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.¹⁰ Within 24 hours after the court issues a protective injunction, the clerk of the court must forward a certified copy of the injunction for service to the law enforcement agency with jurisdiction over the residence of the petitioner. The enforcement agency must serve the respondent with these documents as soon as possible. At the law enforcement agency's request, the clerk may transmit a facsimile copy of the protection injunction that the clerk has certified.¹¹

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under s. 741.30, F.S., s. 784.046, F.S., or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence

⁷ "Sexual violence" means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

⁸ The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

⁹ "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.

¹⁰ Sections 741.30, F.S., s. 784.046, F.S., and s. 784.0458, F.S.

¹¹ Sections 741.30(8)(c)(1), F.S., s. 784.046(8)(c)(1), F.S., and s. 784.0458(8)(c)(1), F.S.

or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, for example, has standing to file a sworn petition for an injunction.¹² Based on this initial petition, a court may issue a *temporary* injunction ex-parte.¹³ During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.^{14, 15} Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.¹⁶ This ex-parte proceeding is often necessary because “the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made.”¹⁷

Parties to an injunction are entitled to a full hearing and a temporary injunction is effective for a maximum of 15 days.¹⁸ A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross exam witnesses.¹⁹ Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to determine if a permanent injunction is warranted based on the petitioner’s belief that he or she is in imminent danger of becoming a victim of domestic violence.²⁰

III. Effect of Proposed Changes:

The bill requires a clerk of the court to electronically transmit a domestic violence injunction, injunction for repeat violence, sexual violence, dating violence, or stalking, and related documents to the sheriff or law enforcement agency of the county where the respondent lives within 24 hours after the injunction is issued by the court. The bill provides that in the event of an Internet or network outage that would delay transmission by more than 24 hours, the clerk may provide copies by facsimile, hand delivery, or certified or registered mail.

The bill clarifies that the following documents are to be submitted with the electronic transmission of the protective injunction within 24 hours after a court issues the injunction, including:

- The petition;
- Any temporary injunction issued;
- Any notice of hearing;

¹² Section 741.30(1)(a), F.S.

¹³ Section 741.30(5)(c), F.S.

¹⁴ *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

¹⁵ Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

¹⁶ Section 741.30(5)(b), F.S.

¹⁷ *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

¹⁸ A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

¹⁹ *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

²⁰ *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

- Any financial affidavit; and
- Any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.

The bill deletes the provisions of current law that would allow the clerk of the court to transmit a facsimile copy of the information only upon the request of the sheriff.

Additionally, the bill authorizes a law enforcement agency to electronically transmit a copy of a protective injunction to a law enforcement officer for the purpose of service of process.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 654 may result in indeterminate negative impact for any law enforcement agencies and clerks of court that do not currently have the resources in place to transmit and receive injunction documents in an electronic format.

The FCCC reports that technology to be able to send electronic certified copies of injunction related documents could cost up to \$30,000 per office, but this cost will vary depending on each county's current resources.²¹ The cost may be higher in smaller counties, whereas larger counties may be able to absorb the costs.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Court Clerks & Comptrollers (FCCC) reports that the bill may have a significant operational impact to the Clerk of Courts, and suggests that delivery options should be expanded to include all means of expedited service.²³ The FCCC suggests that hand-delivery of the injunction and related documents may be most effective and efficient means in some instances, such as when a Clerk's office shares physical office space with a Sheriff's office.²⁴ The FCCC also noted that electronic delivery of an Injunctive Relief Against Sexual Violence would need to be password protected to ensure personal identifying information of the victim is confidential.²⁵ If the clerks and sheriff's offices do not have the required technology to certify documents electronically, the documents will need to be printed, wet ink certified, scanned and emailed.²⁶ Staff would need to be trained on the new technology.²⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 784.046, 784.0485.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 31, 2022:

The CS adds a provision to state that in the event of an Internet or network outage that would delay the electronic transmission of injunction documents by more than 24 hours after the injunction is issued by a court, the clerk of the court may, instead, provide a copy of the injunction documents using facsimile, hand delivery, or certified or registered mail.

²¹ The FCCC, *2022 Bill Analysis*, p. 1 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "2021 FCCC Bill Analysis").

²² *Id.* at p. 2.

²³ *Id.* at p. 1.

²⁴ *Id.* at p. 1-2.

²⁵ *2021 FCCC Bill Analysis* at p. 2

²⁶ *Id.*

²⁷ *Id.*

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Criminal Justice; and Senator Cruz

591-01937-22

2022668c1

A bill to be entitled
An act relating to custodial interrogations of minors;
creating s. 900.06, F.S.; defining terms; providing a
presumption of inadmissibility for confessions of
certain minors which are made as a result of a
custodial interrogation at a place of detention if
deceptive tactics are used; specifying circumstances
under which the presumption may be rebutted; providing
that the state attorney has the burden of proving that
such confessions were voluntary; requiring that
certain objections be made in the trial court;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 900.06, Florida Statutes, is created to
read:

900.06 Deceptive tactics during custodial interrogations of
minors prohibited; presumption of inadmissibility.—

(1) As used in this section, the term:

(a) "Custodial interrogation" means questioning or other
conduct by a law enforcement officer which is reasonably likely
to elicit an incriminating response from an individual and which
occurs under circumstances in which a reasonable individual in
the same circumstances would consider himself or herself to be
in the custody of a law enforcement agency.

(b) "Deception" means the knowing communication by a law
enforcement officer to a subject of a custodial interrogation of
false facts about evidence or unauthorized statements regarding

591-01937-22

2022668c1

30 leniency.

31 (c) "Place of detention" means a police station, sheriff's
32 office, correctional facility, prisoner holding facility, county
33 detention facility, or other governmental facility where a minor
34 may be held in connection with a criminal charge or a petition
35 for delinquency that has been or may be filed against the minor.

36 (2) An oral, written, or sign language confession of an
37 individual who, at the time of the commission of the offense,
38 was younger than 18 years of age, which is made as a result of a
39 custodial interrogation conducted at a place of detention is
40 presumed to be inadmissible as evidence against the minor making
41 the confession in any criminal proceeding or any juvenile court
42 proceeding if, during the custodial interrogation, a law
43 enforcement officer engages in deception.

44 (3) The presumption of inadmissibility of a confession
45 under subsection (2) may be overcome by a preponderance of the
46 evidence that the confession was voluntarily given, based on the
47 totality of the circumstances.

48 (4) The state attorney has the burden of proving that a
49 confession was voluntary. Any objection to the failure of the
50 state to call all material witnesses on the issue of whether the
51 confession was voluntary must be made in the trial court.

52 Section 2. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 668

INTRODUCER: Criminal Justice Committee and Senator Cruz

SUBJECT: Custodial Interrogations of Minors

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.	Moody	Cox	CF	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 creates s. 900.06, F.S., to prohibit deceptive tactics by a law enforcement officer during a custodial interrogation of a minor occurring at a place of detention. As an enforcement mechanism, the bill deems a resulting confession inadmissible in evidence unless the inadmissibility is overcome by the state attorney, by the preponderance of the evidence considering the totality of the circumstances.

The bill defines the terms “custodial interrogation,” “deception,” and “place of detention.”

There is no reported fiscal impact associated with the bill.

The bill becomes effective July 1, 2022.

II. Present Situation:

Custodial Interrogation Legal Requirements

The Fifth Amendment to the United States Constitution states that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”¹ Similarly, the Florida Constitution extends the same protection.²

¹ U.S. Const. amend. V.

² “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. Art. I, s. 9.

Whether a person, adult or minor, is in custody and under interrogation are the threshold questions that determine the need for a law enforcement officer to advise the person of his or her *Miranda* rights.³ If the person is being questioned in a custodial interrogation situation, he or she “must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”⁴

The test to determine if a person is *in custody* for the purposes of his or her *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”⁵

An *interrogation* occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”⁶

Courts use a “reasonable person” standard in making the determination of whether a defendant was in custody at the time he or she made a statement.⁷ The court considers, given the totality of the circumstances, whether a reasonable person in the defendant’s position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.⁸ Among the circumstances or factors the courts consider are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt;
- Whether the suspect is informed that he or she is free to leave the place of questioning;⁹ and
- Whether any promises or misrepresentations were made by the interrogating officers.¹⁰

Admissibility of a Defendant’s Statement as Evidence

The admissibility of a defendant’s statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.¹¹

³ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

⁴ *Id.* at 444. See also *Traylor v. State*, 596 So.2d 957, 965-66 (Fla. 1992).

⁵ *Traylor v. State*, 596 So.2d 957, n. 16; “Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players’ lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.” *J.D.B. v. North Carolina*, 546 U.S.261 (2011), quoting *Thompson v. Keohane*, 516 U.S. 99 (1995).

⁶ *Traylor v. State*, 596 So.2d 957n. 17.

⁷ *Id.*, n. 16.

⁸ *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

⁹ *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

¹⁰ *Frazier v. Cupp*, 394 U.S. 731, 739 (1969).

¹¹ *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

For a defendant's statement, obtained during custodial interrogation, to become evidence in a criminal trial, the judge must first determine whether the statement was given after a free and voluntary waiver of rights. Perhaps the defendant gave a statement during custodial interrogation without being informed of his or her rights at all. Here too the court looks to the totality of the circumstances surrounding the statement to make the admissibility determination.¹² For example, the court may consider issues surrounding the timing and manner in which the defendant was informed of his or her *Miranda* rights.

Specifically, the court may hear testimony from the defendant and any law enforcement officers involved, and review law enforcement officer's reports, and additional evidence such as audio or video recordings of the custodial interrogation. It is the State's burden to show by a preponderance of the evidence that there was no violation of the defendant's constitutional rights in obtaining the statement, and there was a free and voluntary waiver of rights.¹³ A preponderance of evidence means that a party has shown that its version of facts is more likely than not the correct version.¹⁴

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify at trial and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that a law enforcement officer coerced the statement in some way, or that the defendant did not freely and voluntarily waive his or her rights.

Juvenile (Delinquency) – Specific Florida and Federal Law

Section 985.03(7), F.S., defines a "child," "juvenile," or "youth" as any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. A child is "taken into custody" immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.¹⁵

The Florida Supreme Court has declined to adopt an exclusionary rule that would automatically exclude all confessions given by those who are still under the jurisdiction of the juvenile

¹² To determine if a waiver is valid a court must make two inquiries. First, the court must determine if the waiver was voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *see also State v. Mallory*, 670 So.2d 103, 106 (Fla. 1st DCA 1996). Second, the court must determine whether the waiver was executed with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment. *Fare*, 442 U.S. at 725; *Mallory*, 670 So.2d at 106. A court must use a totality of the circumstances analysis to determine whether a waiver of *Miranda* rights meets these criteria and is thus valid.

¹³ *Colorado v. Connelly*, 479 U.S. 157 (1986), stating "[w]hen the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence. *See Nix v. Williams*, 467 U.S. 431, 444, (1984); *United States v. Matlock*, 415 U.S. (1974). ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence ...")."

¹⁴ The concept of "preponderance of the evidence" can be visualized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly to one side or the other, the weightier side will prevail. If the scale does not tip toward the side of the party bearing the burden of proof, that party cannot prevail. US Legal, available at <https://courts.uslegal.com/burden-of-proof/preponderance-of-the-evidence/> (last viewed February 3, 2022).

¹⁵ Section 985.03(48), F.S.

delinquency court.¹⁶ The U.S. Supreme Court has held that the admissibility of a juvenile's confession is based on the totality of the circumstances of the advisement of his or her rights and waiver of those rights, just as with adults.¹⁷

There is no statutory requirement that a law enforcement officer notify a juvenile's parent before interrogating the juvenile.¹⁸ Once a juvenile has told a law enforcement officer that he or she does not want to speak with the officer until a parent arrives, however, all questioning must end.¹⁹

In cases of a juvenile's custodial interrogation, courts have considered the following objective factors when evaluating the totality of the circumstances:

- The point in time when the *Miranda* warnings were given and the waiver of rights, including right to counsel, obtained;²⁰
- The suspect's age,²¹ experience, education, background and intelligence;²² and
- Despite the fact that it is not required, courts should consider whether the suspect's parents were contacted by law enforcement and whether the suspect was able to consult with them before questioning, if he or she desired.²³

Deception by a law enforcement officer during custodial interrogation does not render a confession involuntary per se, but such deception should be made part of a court's totality of the circumstances analysis in judging the voluntariness and admissibility of a confession.²⁴

Other States' Laws

Oregon enacted a law in 2021 prohibiting law enforcement officers from intentionally using information known by the officer to be false to elicit a statement from a juvenile suspect during custodial interrogation.²⁵ In the Oregon law such a statement made by the juvenile suspect is presumed to be involuntary. The presumption may be overcome by the state proving, by clear

¹⁶ *State v. Francois*, 197 So.2d 492 (Fla. 1967).

¹⁷ *Gallegos v. Colorado*, 370 U.S. 49 (1962).

¹⁸ Section 985.101(3), F.S., requires law enforcement to try to notify a juvenile's parent or guardian when the juvenile is taken into custody, but the failure to comply with this section or the inability to contact the parent or guardian does not render a confession involuntary. *Neely v. State*, 126 So.3d 342 (Fla. 2013). See also *Frances v. State*, 857 So.2d 1002, 1003–04 (Fla. 5th DCA 2003) citing *Brancaccio v. State*, 773 So.2d at 583–84 (Fla. 4th DCA 2000); and *McIntosh v. State*, 37 So.3d 914 (Fla. 3d DCA 2010) regarding the juvenile being unable to confer with a parent or guardian.

¹⁹ *B.P. v. State*, 815 So.2d 728 (Fla. 5th DCA 2002).

²⁰ See *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999) where “police began questioning Ramirez at the police station after failing to first administer the *Miranda* warnings. When the police finally administered the *Miranda* warnings, the administration was not careful and thorough. To the contrary, there was a concerted effort to minimize and downplay the significance of the *Miranda* rights.”

²¹ “[W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case...it is, however, a reality that courts cannot simply ignore.” *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), (footnotes and citations omitted).

²² See *Doerr v. State*, 348 So.2d 398 (Fla. 2d DCA 1977) where the suspect indicated that he had confessed because he “didn't want to hear [the detective's] mouth,” and that “he was familiar with the *Miranda* warnings because he had heard them when the police had interrogated him on other occasions.”

²³ *Doerr v. State*, 383 So.2d 905, 907 (Fla. 1980).

²⁴ *Frazier v. Cupp*, 394 U.S. 731, 738 (1969).

²⁵ 2021 Oregon Senate Bill 418A, signed by the Governor, July 14, 2021.

and convincing evidence that the statement was voluntary and not made in response to the false information. It means that the evidence is highly and substantially more likely to be true than untrue or that the fact finder must be convinced that the contention is highly probable.²⁶ In other words, the party alleging the contention must prove that the contention is substantially more likely than not, true.

Illinois enacted S.B. 2122 (P.A. 102-101), effective January 1, 2022,²⁷ which is virtually identical to the Oregon law. The Illinois law has a slightly different definition of the term “place of detention,” and requires that the presumption of inadmissibility of the confession be overcome by the preponderance of the evidence which is a lower standard than the Oregon law.²⁸

Taking a different approach in Washington, new legislation taking effect in January 2022 will require an attorney to consult with a juvenile suspect before he or she can be questioned by law enforcement. With few exceptions, the juvenile’s statement made prior to consulting the attorney is inadmissible.²⁹

III. Effect of Proposed Changes:

The bill creates s. 900.06, F.S., which prohibits methods of juvenile “custodial interrogations” held at a “place of detention” which include the use of “deception.”

The term “custodial interrogation” is defined by the bill as questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

“Deception” is defined as the knowing communication by a law enforcement officer to a subject of a custodial interrogation of false facts about evidence or unauthorized statements regarding leniency.

The bill defines “place of detention” as a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where a minor may be held in connection with a criminal charge or a petition for delinquency that has been or may be filed against the minor.³⁰

The bill declares that an oral, written, or sign language confession of an individual who, at the time of the commission of the offense, was younger than 18 years of age, which is made as a result of a custodial interrogation conducted at a place of detention is presumed to be inadmissible as evidence against the minor making the confession in any criminal proceeding or

²⁶ *Colorado v. New Mexico*, 467 U.S. 310 (1984); Legal Information Institute, available at https://www.law.cornell.edu/wex/clear_and_convincing_evidence (last viewed February 3, 2022).

²⁷ 705 ILCS 405/5-401.6.

²⁸ 725 ILCS 5/5-103-2.2.

²⁹ Engrossed Substitute House Bill 1140, Chapter 328, Laws of 2021, RCW 13.40.

³⁰ Section 1.01(13), F.S., defines “minor” as including any person who has not attained the age of 18 years.

any juvenile court proceeding if, during the custodial interrogation, a law enforcement officer engages in deception.

The presumption of inadmissibility of the confession may be overcome by the state attorney by a preponderance of the evidence, based on the totality of the circumstances, that the confession was voluntarily made. If there is any objection by the minor that the state failed to call all material witnesses on the issue of the voluntariness of the confession, it must be made at the trial court level, not the appellate level.

The bill has an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 900.06 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 11, 2022:

The committee substitute deletes the term “juvenile officer” from the bill to conform to current law in which the term is not found.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Burgess

590-02250A-22

20221032c1

A bill to be entitled

An act relating to guardianships; amending s. 744.306, F.S.; deleting provisions relating to foreign guardianship orders; amending s. 744.363, F.S.; authorizing a guardian to sign an order not to resuscitate in certain limited circumstances; amending s. 744.3675, F.S.; authorizing a guardian to sign an order not to resuscitate in certain limited circumstances; amending s. 744.441, F.S.; authorizing a guardian to consent to the entry of an order not to resuscitate by a physician under certain limited circumstances; requiring a guardian to notify the court within a certain time after signing or consenting to the entry of an order not to resuscitate; creating part IX of ch. 744, Florida Statutes, entitled the "Florida Guardianship Jurisdiction Act"; creating s. 744.74, F.S.; providing a short title; creating s. 744.75, F.S.; providing legislative purpose and construction; creating s. 744.76, F.S.; defining terms; creating s. 744.77, F.S.; providing construction relating to international application; creating s. 744.78, F.S.; authorizing courts of this state to communicate with courts of another state relating to certain proceedings; requiring courts of this state to make a record of such communication; specifying communications that interested persons must be able to participate in; creating s. 744.79, F.S.; specifying actions that a court of this state may request from, and perform for,

590-02250A-22

20221032c1

a court of another state in certain guardianship proceedings; creating s. 744.80, F.S.; authorizing courts of this state to permit witness testimony by certain means; providing that certain evidence may be excluded after a judicial determination of admissibility; creating s. 744.81, F.S.; specifying factors a court must consider in determining whether a respondent has a significant connection with a particular state; creating s. 744.82, F.S.; providing construction relating to the basis for jurisdiction; creating s. 744.83, F.S.; specifying circumstances when a court of this state has jurisdiction in certain guardianship proceedings; creating s. 744.84, F.S.; specifying the special jurisdiction of courts of this state; providing procedures relating to the appointment of an emergency temporary guardian under certain circumstances; creating s. 744.85, F.S.; providing that a court that has appointed a guardian has exclusive and continuing jurisdiction until certain conditions are met; creating s. 744.86, F.S.; authorizing a court of this state to decline to exercise its jurisdiction under certain circumstances; specifying requirements for such court; specifying factors a court must consider in determining whether it is an appropriate forum; creating s. 744.87, F.S.; authorizing a court to decline to exercise jurisdiction or to exercise jurisdiction for a limited purpose under certain circumstances; authorizing a court to assess certain expenses against certain

590-02250A-22

20221032c1

persons; prohibiting the court from assessing certain fees, costs, or expenses against this state; creating s. 744.88, F.S.; providing notice requirements for certain petitions to appoint a guardian; creating s. 744.89, F.S.; providing procedures when certain proceedings are pending in more than one state; creating s. 744.90, F.S.; authorizing a guardian appointed in this state to petition to transfer the guardianship to another state; providing notice requirements; providing requirements and procedures for the court; specifying conditions before a court issues a final order confirming the transfer and terminating the guardianship; providing a requirement for the guardian in filing a petition for discharge; creating s. 744.91, F.S.; specifying requirements and procedures for the transfer of a guardianship from another state; providing construction; creating s. 744.92, F.S.; providing a procedure for registering guardianship orders in this state under certain circumstances; creating s. 744.93, F.S.; providing construction relating to the effect of registering a guardianship order; creating s. 744.94, F.S.; providing construction relating to uniformity of law; creating s. 744.95, F.S.; providing construction relating to the federal Electronic Signatures in Global and National Commerce Act; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

590-02250A-22

20221032c1

Section 1. Section 744.306, Florida Statutes, is amended to read:

744.306 Authority of guardian to accept payment of debt owed to ward ~~Foreign guardians.~~

~~(1) When the residence of a ward of a foreign guardian is moved to this state, the guardian shall, within 60 days after such change of residence, file the authenticated order of her or his appointment with the clerk of the court in the county where the ward resides. Such order shall be recognized and given full faith and credit in the courts of this state. The guardian and the ward are subject to this chapter.~~

~~(2) A guardian appointed in any state, territory, or country may maintain or defend any action in this state as a representative of her or his ward.~~

~~(1)~~ (3) ~~A debtor Debtors~~ who has not ~~have~~ received a ~~no~~ written demand for payment from a guardian appointed in this state within 60 days after the appointment of a guardian, curator, conservator, or committee in any state, territory, or country other than this state, and whose property in this state is subject to a mortgage or other lien securing the debt held by the foreign guardian, curator, conservator, or committee, may pay the debt to the foreign guardian, curator, conservator, or committee after the expiration of 60 days from the date of her or his appointment. A satisfaction of the mortgage or lien, executed after the 60 days have expired by the foreign guardian, curator, conservator, or committee, with an authenticated copy of the letters or other evidence of authority of the foreign guardian, curator, conservator, or committee attached, may be

590-02250A-22

20221032c1

recorded in the public records of this state and shall constitute an effective discharge of the mortgage or lien, irrespective of whether the debtor had received written demand before paying the debt.

(2) ~~(4)~~ A person ~~All persons~~ indebted to a ward, or having possession of personal property belonging to a ward, who has not ~~have~~ received a no written demand for payment of the indebtedness or the delivery of the property from a guardian appointed in this state is ~~are~~ authorized to pay the indebtedness or to deliver the personal property to the foreign guardian, curator, conservator, or committee after the expiration of the 60 days from the date of her or his appointment.

Section 2. Paragraph (f) of subsection (1) of section 744.363, Florida Statutes, is amended to read:

744.363 Initial guardianship plan.—

(1) The initial guardianship plan shall include all of the following:

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. If a preexisting order not to resuscitate is disclosed in a court approved initial guardianship plan and has not been suspended by the court, a plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3) without prior court approval under s.

590-02250A-22

20221032c1

146 744.441(2).

147 Section 3. Paragraph (d) of subsection (1) of section
148 744.3675, Florida Statutes, is amended to read:

149 744.3675 Annual guardianship plan.—Each guardian of the
150 person must file with the court an annual guardianship plan
151 which updates information about the condition of the ward. The
152 annual plan must specify the current needs of the ward and how
153 those needs are proposed to be met in the coming year.

154 (1) Each plan for an adult ward must, if applicable,
155 include:

156 (d) A list of any preexisting orders not to resuscitate
157 executed under s. 401.45(3) or preexisting advance directives,
158 as defined in s. 765.101, the date an order or directive was
159 signed, whether such order or directive has been suspended by
160 the court, and a description of the steps taken to identify and
161 locate the preexisting order not to resuscitate or advance
162 directive. If a preexisting order not to resuscitate is
163 disclosed in a court approved annual guardianship plan and has
164 not been suspended by the court, a plenary guardian or a limited
165 guardian of a ward may sign an order not to resuscitate as
166 provided in s. 401.45(3) without prior court approval under s.
167 744.441(2).

168 Section 4. Subsection (2) of section 744.441, Florida
169 Statutes, is amended to read:

170 744.441 Powers of guardian upon court approval.—After
171 obtaining approval of the court pursuant to a petition for
172 authorization to act:

173 (2) A plenary guardian or a limited guardian of a ward may
174 sign an order not to resuscitate as provided in s. 401.45(3).

590-02250A-22

20221032c1

When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed, and:

(a) Rule on the relief requested immediately after the preliminary hearing; or

(b) Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

(c) Notwithstanding paragraph (a), if the ward is hospitalized and exigent circumstances exist which do not allow time for the guardian to seek court approval under paragraph (a), without prior court approval, the guardian may consent to an order not to resuscitate being entered in the ward's chart by a physician provided the hospital ethics committee has met and agrees with the entry of an order not to resuscitate.

(d) As soon as reasonable, and not more than 72 hours after signing an order not to resuscitate or consenting to an order being entered in the ward's chart, the guardian must file notice of such action with the court attaching documentation supporting the decision or a copy of the court's order issued pursuant to paragraph (a).

Section 5. Part IX of chapter 744, Florida Statutes, consisting of ss. 744.74-744.96, Florida Statutes, is created and entitled the "Florida Guardianship Jurisdiction Act."

Section 6. Section 744.74, Florida Statutes, is created to read:

744.74 Short title.—Sections 744.74-744.396 may be cited as

590-02250A-22

20221032c1

the "Florida Guardianship Jurisdiction Act."

Section 7. Section 744.75, Florida Statutes, is created to read:

744.75 Purpose; construction.—The purpose of this part is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. This part is intended to supplement, but not replace, other parts of this chapter which provide procedures for determining incapacity, appointing guardians, managing estates, and other procedures as governed by this chapter. The general purposes of this part are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.

(2) Establish procedures for transferring guardianship from one state to another state when an adult ward moves.

(3) Avoid relitigating the guardianship decisions of other states in this state.

(4) Discourage the use of the interstate system for continuing controversies over guardianship.

(5) Provide a uniform national system for registration and enforcement of out-of-state orders appointing a guardian.

Section 8. Section 744.76, Florida Statutes, is created to read:

744.76 Definitions.—As used in this part, the term:

(1) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. If no such state exists, then the home state

590-02250A-22

20221032c1

is the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months immediately before the filing of the petition.

(2) "Respondent" means an adult who is an alleged incapacitated person or ward.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence, and in which substantial evidence concerning the respondent is available.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 9. Section 744.77, Florida Statutes, is created to read:

744.77 International application of part.—A court of this state may treat a foreign country as if it were a state of the United States for purposes of applying this part.

Section 10. Section 744.78, Florida Statutes, is created to read:

744.78 Communication between courts.—

(1) A court of this state may communicate with a court of another state concerning a proceeding arising under this chapter; however, the court of this state shall make a record of the communication.

(2) Communications between courts may not occur without the ability of interested persons to also participate in the

590-02250A-22

20221032c1

communication, either in person or by other means of participation. Interested persons need not be a party to the internal communications between the clerks of the various courts.

Section 11. Section 744.79, Florida Statutes, is created to read:

744.79 Cooperation between courts.—

(1) In a guardianship proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold a hearing.

(b) Order a person in that state to produce evidence or given testimony pursuant to procedures of that state.

(c) Order that an evaluation or assessment be made of the respondent.

(d) Order any appropriate investigation of a person involved in a proceeding.

(e) Forward to the court of this state a certified copy of the transcript or other records of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or paragraph (d).

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent.

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103.

590-02250A-22

20221032c1

291 (2) If a court of another state in which a guardianship
292 proceeding is pending requests the kind of assistance described
293 in subsection (1), a court of this state has jurisdiction for
294 the limited purpose of granting the request or making reasonable
295 efforts to comply with the request.

296 Section 12. Section 744.80, Florida Statutes, is created to
297 read:

298 744.80 Taking testimony in another state.—

299 (1) In a guardianship proceeding, upon agreement of all the
300 parties, a court of this state may permit a witness located in
301 another state to be deposed or to testify by telephone,
302 audiovisual, or other electronic means.

303 (2) Documentary evidence transmitted from another state to
304 a court of this state by technological means which does not
305 produce an original writing may be excluded from evidence after
306 a judicial determination of admissibility.

307 Section 13. Section 744.81, Florida Statutes, is created to
308 read:

309 744.81 Significant-connection factors.—In determining
310 whether a respondent has a significant connection with a
311 particular state, the court shall consider the following:

312 (1) The location of the respondent's family and other
313 persons required to be notified of the guardianship proceeding.

314 (2) The length of time that the respondent was physically
315 present in the state at any point in time and the duration of
316 any absence.

317 (3) The location of the respondent's property.

318 (4) The extent to which the respondent has ties to the
319 state, such as voting registration, state or local tax return

590-02250A-22

20221032c1

320 filing, vehicle registration, driver license, social
321 relationships, and receipt of services.

322 Section 14. Section 744.82, Florida Statutes, is created to
323 read:

324 744.82 Exclusive basis for jurisdiction.—This part provides
325 the exclusive jurisdictional basis for a court of this state to
326 appoint a guardian for an adult. If the courts of this state
327 have jurisdiction, the appropriate venue shall be determined as
328 provided in s. 744.1097.

329 Section 15. Section 744.83, Florida Statutes, is created to
330 read:

331 744.83 Jurisdiction.—A court of this state has jurisdiction
332 to determine incapacity, appoint a guardian, or undertake
333 similar proceedings if any of the following applies:

334 (1) This state is the respondent's home state.

335 (2) On the date a petition is filed, this state is a
336 significant-connection state and:

337 (a) The respondent does not have a home state, or a court
338 of the respondent's home state has declined to exercise
339 jurisdiction because this state is a more appropriate forum; or

340 (b) The respondent has a home state but a petition for an
341 appointment or order is not pending in a court of that state or
342 another significant-connection state, and before the court of
343 this state makes the appointment or issues an order:

344 1. A petition to determine incapacity, appoint a guardian,
345 or other similar proceeding is not filed in the respondent's
346 home state;

347 2. An objection to the jurisdiction of the court of this
348 state is not filed by a person required to be notified of the

590-02250A-22

20221032c1

349 proceeding; and

350 3. The court of this state concludes that it is the
351 appropriate forum after considering the factors set forth in s.
352 744.86.

353 (3) This state does not have jurisdiction under subsection
354 (1) or subsection (2), the respondent's home state and all
355 significant-connection states have declined to exercise
356 jurisdiction because this state is the more appropriate forum,
357 and jurisdiction in this state is consistent with the State
358 Constitution and the United States Constitution.

359 (4) The requirements for special jurisdiction under s.
360 744.84 are met.

361 Section 16. Section 744.84, Florida Statutes, is created to
362 read:

363 744.84 Special jurisdiction.—

364 (1) A court of this state has jurisdiction to do the
365 following:

366 (a) In accordance with this chapter, appoint an emergency
367 temporary guardian pursuant to s. 744.3031 for a person who is
368 physically present in this state.

369 (b) Appoint a guardian for a ward for whom a provisional
370 order to transfer the proceeding from another state has been
371 issued.

372 (2) If a petition for the appointment of an emergency
373 temporary guardian is brought in this state and this state is
374 not the respondent's home state on the date that the petition is
375 filed, the court must dismiss the proceeding at the request of
376 the court of the home state, if any such request is made, only
377 after a hearing and judicial determination of the appropriate

590-02250A-22

20221032c1

378 forum of the alleged incapacitated person based on those factors
379 as set forth in s. 744.86, whether by the home state or this
380 state. If, after the hearing, the home state and this state
381 differ in their determination of which is the appropriate forum,
382 the determination of the home state shall prevail, whether
383 dismissal is requested before or after the emergency
384 appointment.

385 Section 17. Section 744.85, Florida Statutes, is created to
386 read:

387 744.85 Exclusive and continuing jurisdiction.—Except as
388 otherwise provided in s. 744.84, a court that has appointed a
389 guardian consistent with this part has exclusive and continuing
390 jurisdiction over the proceeding only until a determination is
391 made as to the proper jurisdiction of the action, the
392 jurisdiction is terminated by the court, or the appointment or
393 order expires by its own terms.

394 Section 18. Section 744.86, Florida Statutes, is created to
395 read:

396 744.86 Appropriate forum.—

397 (1) A court of this state having jurisdiction to appoint a
398 guardian may decline to exercise its jurisdiction if it
399 determines at any time that a court of another state is a more
400 appropriate forum.

401 (2) If a court of this state declines to exercise its
402 jurisdiction under subsection (1), it must dismiss or stay the
403 proceeding. The court may impose any condition that the court
404 considers just and proper, including requiring that a petition
405 for the appointment of a guardian or issuance of similar
406 petition be filed promptly in another state.

590-02250A-22

20221032c1

407 (3) In determining whether it is an appropriate forum, the
408 court shall consider all relevant factors, including:

409 (a) Any expressed preference of the respondent.

410 (b) Whether abuse, neglect, or exploitation of the
411 respondent has occurred or is likely to occur, and which state
412 could best protect the respondent from the abuse, neglect, or
413 exploitation.

414 (c) The length of time the respondent was physically
415 present in or was a legal resident of this or another state.

416 (d) The distance of the respondent from the court in each
417 state.

418 (e) The financial circumstances of the respondent's estate.

419 (f) The nature and location of the evidence.

420 (g) The ability of the court in each state to decide the
421 issue expeditiously and the procedures necessary to present
422 evidence.

423 (h) The familiarity of the court of each state with the
424 facts and issues in the proceeding.

425 (i) If an appointment was made, the court's ability to
426 monitor the conduct of the guardian or conservator.

427 Section 19. Section 744.87, Florida Statutes, is created to
428 read:

429 744.87 Jurisdiction declined by reason of conduct.—

430 (1) If at any time a court of this state determines that it
431 acquired jurisdiction to appoint a guardian because a person
432 seeking to invoke its jurisdiction engaged in bad faith or
433 unlawful conduct, the court may:

434 (a) Decline to exercise jurisdiction; or

435 (b) Exercise jurisdiction for the limited purpose of

590-02250A-22

20221032c1

436 fashioning an appropriate remedy to ensure the health, safety,
437 and welfare of the respondent or protecting the respondent's
438 property, or both, including staying the proceeding until a
439 petition for the appointment of a guardian is filed in a court
440 of another state having jurisdiction.

441 (2) If a court of this state determines that it acquired
442 jurisdiction to appoint a guardian because a person seeking to
443 invoke its jurisdiction engaged in bad faith or unlawful
444 conduct, it may assess that person necessary and reasonable
445 expenses, including attorney fees, investigative fees, court
446 costs, communication expenses, witness fees and expenses, and
447 travel expenses. The court may not assess fees, costs, or
448 expenses of any kind against this state or a governmental
449 subdivision, agency, or instrumentality of this state unless
450 otherwise expressly authorized by law.

451 Section 20. Section 744.88, Florida Statutes, is created to
452 read:

453 744.88 Notice of proceeding.—If a petition for the
454 appointment of a guardian is brought in this state and this
455 state is not the respondent's home state on the date that the
456 petition was filed, the petitioner must provide notice of the
457 petition to those persons who would be entitled to notice of the
458 petition in this state and in the respondent's home state.

459 Section 21. Section 744.89, Florida Statutes, is created to
460 read:

461 744.89 Proceedings in more than one state.—Except for a
462 petition for the appointment of an emergency temporary guardian,
463 if a petition for the appointment of a guardian is filed in this
464 state and in another state and neither petition has been

590-02250A-22

20221032c1

dismissed or withdrawn, the following rules apply:

(1) If the court of this state has jurisdiction under this chapter, it may proceed with the case unless a court of another state acquires jurisdiction before the appointment of the guardian or issuance of the order.

(2) If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination of same, whether at the time the petition is filed or at any time before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination of same, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum.

Section 22. Section 744.90, Florida Statutes, is created to read:

744.90 Transfer of guardianship to another state.—

(1) A guardian appointed in this state may petition the court to transfer the guardianship to another state as provided in s. 744.1098(1).

(2) Notice of a petition under subsection (1) must be given to the ward and all of the next of kin of the ward.

(3) On the court's own motion or upon request of the guardian, the ward, or both, the court shall hold a hearing on a petition filed under subsection (1).

(4) The court may issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the

590-02250A-22

20221032c1

494 court is satisfied that the guardianship will likely be accepted
495 by the court of the other state and the court finds that:

496 (a) The ward is physically present in or is reasonably
497 expected to move permanently to the other state;

498 (b) An objection to the transfer has not been made or, if
499 an objection has been made, the objector has not established
500 that the transfer would be contrary to the best interests of the
501 ward ; and

502 (c) Plans for care and services for the ward in the other
503 state are reasonable and sufficient.

504 (5) The court shall issue a final order confirming the
505 transfer and terminating the guardianship upon its receipt of:

506 (a) A provisional order accepting the proceeding from the
507 court to which the proceeding is to be transferred and issued
508 under provisions similar to s. 744.89; and

509 (b) The documents required, including any required
510 accountings, to terminate a guardianship in this state.

511 (6) The guardian of the ward in this state shall file a
512 petition for discharge in accordance with part VII of this
513 chapter within 60 days after receipt of an order confirming the
514 transfer of the guardianship to another jurisdiction.

515 Section 23. Section 744.91, Florida Statutes, is created to
516 read:

517 744.91 Accepting guardianship transferred from another
518 state.—

519 (1) Within 60 days after the residence of a ward of a
520 foreign guardian is moved to this state, the foreign guardian
521 appointed in another state shall file a petition to determine
522 incapacity and a petition to appoint a guardian with the clerk

590-02250A-22

20221032c1

of court in the county in which the ward resides. The petitions must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

(2) Notice of the petitions under subsection (1) must be given to those persons who would be entitled to notice in this state in the same manner as notice is required to be given in this state and the respondent's home state.

(3) The court shall hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

(4) The court shall issue orders provisionally granting the petitions unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or

(b) The guardian is ineligible for appointment in this state.

(5) Until such time as a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. A foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

(6) After appointment of a guardian in this state, the court may issue such orders as necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

590-02250A-22

20221032c1

552 (7) The authority of the guardian of a nonresident ward
553 shall be recognized and given full faith and credit in the
554 courts of this state. A guardian appointed in another state or
555 country may maintain or defend any action in this state as a
556 representative of the ward unless a guardian has been appointed
557 in this state.

558 Section 24. Section 744.92, Florida Statutes, is created to
559 read:

560 744.92 Registration of guardianship orders.—If a guardian
561 has been appointed in another state and a petition for the
562 appointment of a guardianship is not pending in this state, the
563 guardian appointed in the other state, after giving notice of
564 the appointment to the appointing court of the intent to
565 register, may register the guardianship order in this state by
566 filing it as a foreign judgment in a court of this state
567 pursuant to ss. 744.307 and 744.308.

568 Section 25. Section 744.93, Florida Statutes, is created to
569 read:

570 744.93 Effect of registration.—Upon registration of an
571 order from another state appointing a guardian, the guardian or
572 conservator may exercise in this state all powers authorized in
573 the order of appointment except as prohibited under the laws of
574 this state and, if the guardian is not a resident of this state,
575 subject to any conditions imposed upon nonresident parties.

576 Section 26. Section 744.94, Florida Statutes, is created to
577 read:

578 744.94 Uniformity of application and construction.—In
579 applying and construing this part, consideration must be given
580 to the need to promote uniformity of the law with respect to its

590-02250A-22

20221032c1

581 subject matter among states that enact it.

582 Section 27. Section 744.95, Florida Statutes, is created to
583 read:

584 744.95 Relation to federal Electronic Signatures in Global
585 and National Commerce Act.—This part modifies, limits, and
586 supersedes the federal Electronic Signatures in Global and
587 National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not
588 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
589 7001(c), or authorize electronic delivery of any of the notices
590 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

591 Section 28. This act applies to new and existing
592 guardianship proceedings on or after July 1, 2022.

593 Section 29. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1032

INTRODUCER: Judiciary Committee and Senator Burgess

SUBJECT: Guardianships

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1032 creates the Florida Guardianship Jurisdiction Act and revises three statutes governing orders not to resuscitate.

The Florida Guardianship Jurisdiction Act is crafted to provide direction to courts, attorneys, guardians, and individuals when an adult guardianship proceeding involves this state and at least one other state.

The act is based on the model Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act developed by the Uniform Law Commission. The Uniform act, or a slight variation of the act, has been adopted in 46 states.

The focus of this act, like the model act, is limited to resolving guardianship issues that occur when multiple state jurisdictions are involved, when complexities arise because a guardianship is transferred from one state to another, and when guardianships or orders in one state are sought to be recognized in another state. Accordingly, the bill establishes criteria for courts to use in determining which state's courts are the most appropriate forum to assert jurisdiction over and resolve a guardianship issue.

The bill also revises three existing statutes governing orders not to resuscitate. In general terms, the revisions permit a guardian to sign an order not to resuscitate, without additional court approval, when a preexisting order was approved by a court in an initial or annual guardianship

plan and the order has not been suspended by a court. Additionally, a guardian is authorized to consent to an order not to resuscitate being placed in a ward's chart by a physician if the hospital ethics committee has met and agrees with the entry and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek additional court approval. Within 72 hours after the signing the order or consenting to the order, the guardian must file notice of the action with the court and provide accompanying documentation that supports the decision or a copy of the court's order after the preliminary hearing.

II. Present Situation:

Guardianship

A guardianship is a legal concept in which a "guardian" is given the legal duty and authority to care for a "ward" or his or her property because the ward is considered incapable of acting for himself or herself.¹ The ward's incapacity is most often due to infancy, disability, or incapacity. Guardianships are generally involuntary procedures and disfavored by courts because the ward loses his or her individual and civil rights. However, guardianships are necessary to protect the most vulnerable people who do not have the ability to function and protect themselves.

Mobile Adults and Multiple Jurisdictions

As adults live longer, own property in multiple states, and have family members who reside in a variety of states, determining which state is the most appropriate forum for guardianship proceedings for an aging and infirm adult, often a parent, can be complicated. These factors for determining jurisdiction present complex issues for courts, attorneys, and guardians as they seek to unravel which state should have jurisdiction, how a guardianship may be transferred to another state, and to what extent one court must recognize a guardianship established in a different state.² As litigation continues among family members, emotions are strained, and considerable financial assets are expended, often reducing or depleting a ward's estate.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

In an effort to resolve these issues that were consuming a substantial amount of legal resources, the Uniform Law Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in 2007.

The act has a narrow scope and deals solely with interstate jurisdiction and connected issues for adult guardianships. It has been adopted in 46 states, with Florida, Texas, Kansas, and Michigan being the exceptions to adoption.³

¹ BLACK'S LAW DICTIONARY, 11th edition, 2019.

² American Bar Association, Commission on Law and Aging, *State Adult Guardianship Legislation: Directions of Reform – 2013*, available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_final_guardianship_legislative_update_12-18-13.pdf (last visited Feb. 5, 2022).

³ Uniform Law Commission, *Adult Guardianship and Protective Proceedings Jurisdiction Act*, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=0f25ccb8-43ce-4df5-a856-e6585698197a> (last visited Feb. 5, 2022).

Many of the provisions to the UAGPPJA are similar to those in the Uniform Child Custody Jurisdiction and Enforcement Act which were codified in Part II of chapter 61, F.S., in 2002. Moreover, the purposes of the UAGPPA and the UCCJEA are similar. The purposes of the UCCJEA include avoiding jurisdictional competition and conflict with courts of other states regarding child custody matters and ensuring that that child custody cases are decided in the most appropriate state.⁴

Orders Not to Resuscitate

Resuscitation may be withheld or withdrawn from a patient by certain enumerated medical personnel when evidence of an order not to resuscitate is presented.

For an order not to resuscitate to be valid, it must:

- Be on the form adopted by the Department of Health, and
- Be signed by the patient's physician or physician's assistant and by the patient, or if the patient is incapacitated, by the patient's healthcare surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.⁵

Initial Guardianship Plan

Under the provisions of guardianship law, an initial guardianship plan must include a list of any preexisting orders not to resuscitate or preexisting advance directives, the date the order or directive was signed, whether it has been suspended by the court, and a description of the steps taken to identify and locate the order or directive. An initial guardianship plan continues in effect until it is amended or replaced by the approval of an annual guardianship plan, until the ward's capacity is restored or the ward dies, or a minor ward reaches the age of 18 years.⁶

Annual Guardianship Plan

Each guardian of the person is required to file an annual guardianship plan with the court which updates information about a ward's condition. The annual guardianship plan for an adult ward, like the initial guardianship plan, must also contain a list of any preexisting orders not to resuscitate or preexisting advance directives, the date the order or directive was signed, whether the order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order or directive.⁷

Powers of a Guardian Upon Court Approval

A plenary guardian or a limited guardian, after receiving court approval pursuant to a petition for authorization to act, may sign an order not to resuscitate. When the guardian seeks court approval to sign the order, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed and:

- Rule on the relief requested *immediately* after the preliminary hearing; or

⁴ Section 61.502, F.S.

⁵ Section 401.45, F.S.

⁶ Section 744.363, F.S.

⁷ Section 744.3675, F.S.

- Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested *immediately* after the evidentiary hearing.⁸

III. Effect of Proposed Changes:

The Florida Guardianship Jurisdiction Act

Chapter 744, F.S., the guardianship chapter, is currently divided into eight parts. This bill creates a new part in ch. 744, F.S., a part which creates 24 statutes.

Section 5 creates the new “Part IX” of chapter 744, F.S., titled the “Florida Guardianship Jurisdiction Act.”

Section 6 provides the short title of the act which is the “Florida Guardianship Jurisdiction Act.”(s. 744.74, F.S.)

Section 7 establishes the purpose and construction of the part. The section explains that the purpose of the “part is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings.” This act clarifies that it is intended to supplement, but not replace, the current method for determining incapacity, appointing guardians, managing estates, and other procedures as governed by the chapter. The general purposes of this part are to:

- Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.
- Establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves.
- Avoid relitigating the guardianship decisions of other states in this state.
- Discourage the use of the interstate system for continuing controversies over guardianship.
- Provide a uniform national system for registration and enforcement of out-of-state guardianship orders. (s. 744.75, F.S.)

Section 8 defines 4 terms used in the act: adult, emergency, guardian, guardianship order, guardianship proceeding, home state, incapacitated person, interested person, party, person, respondent, significant-connection state, state, and ward. (s. 744.76, F.S.)

Key among these terms are the definitions of “home state” and “significant-connection state.” When a court seeks to determine which state’s courts provide the most appropriate forum, these two terms are decisive:

- “Home state” The home state is the state where the individual was physically present for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. This 6-month period also includes any time of temporary absence. If no home state exists, then his or her home state is the state where he or she was physically present, including any period of temporary absence, for at least 6 consecutive months, ending within the 6 months immediately before the filing of the petition. This definition also means that the home state’s jurisdiction to appoint a guardian or issue a

⁸ Section 744.441, F.S.

protective order for someone continues for a period of up to 6 months after the person relocates to another state.⁹

- A “significant-connection state” is a slightly broader concept than the home state. It means a state, other than the home state, where the respondent has a significant connection other than mere physical presence, and where substantial evidence concerning the respondent is available.¹⁰

According to the notes drafted by the National Conference of Commissioner on Uniform State Laws, a respondent in a guardianship proceeding will have only one single home state, but may have several states that are determined to be significant-connection states.¹¹

The other terms defined by the act include:

- “Respondent”, which means an adult who is an alleged incapacitated person or ward; and
- “State”, which means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 9 addresses how guardianship orders issued in other countries are applicable to this act. The act requires a state court to treat a foreign country as though it were a state of the United States for purposes of applying the part. (s. 774.77, F.S.) This provision is similar to how this state’s courts are directed to treat child custody determinations made in a foreign country under s. 61.506, F.S., part of this state’s Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Section 10 addresses communication between courts but does not specify a particular method that must be used. A court in this state is authorized to communicate with a court in another state when proceedings arise under this part. If the court so chooses to communicate with another court, it must make a record of the communication. When communications are conducted between the courts of different states, an interested person must be able to participate, either in person, or by some remote means, and the interested person does not need to be a party to the internal communications between the court clerks. (s. 744.78, F.S.) These procedures for communications between courts are nearly identical to those authorized under s. 61.511, F.S., part of this state’s UCCJEA.

Section 11 recognizes that cooperation among the various courts is essential for this act to succeed across multiple states. This section provides that a Florida court, in a guardianship proceeding conducted in this state, may request the appropriate court of another state to do the following:

- Hold a hearing.
- Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state.

⁹ National Conference of Commissioners on Uniform State Laws, *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* (2007), p. 2-3

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=669b547e-a76e-6532-a13c-f97fd4f32d7f> (last visited Feb. 5, 2022).

¹⁰ *Id.*, at 3.

¹¹ *Id.*

- Order that an evaluation or assessment be made of the respondent.
- Order any appropriate investigation of a person involved in a proceeding.
- Forward to a court of this state a certified copy of the transcript or other records of a hearing or any other proceeding, any evidence otherwise produced under the procedures of that state, and any evaluation or assessment prepared in compliance with an order requiring an evaluation or assessment or investigation involving a person in the proceeding.
- Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103, F.S.

If a court of another state in which a guardianship proceeding is pending requests the kind of assistance described above, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. The language in the bill does not describe how costs and expenses are to be assessed, but leaves the issue to be determined by local law.¹² (s. 744.79, F.S.) The procedures authorized by this section are similar to those in s. 61.513, F.S., part of this state's UCCJEA.

Section 12 provides for the taking of testimony in another state. If all the parties agree, a court in this state may permit a witness in another state to be deposed or testify by phone, audiovisual, or other electronic means.

When documentary evidence is transmitted from another state to a court of this state by technological means and it does not produce an original writing, it may be excluded from evidence after a court determines its admissibility. (s. 744.80, F.S.) The procedures authorized by this section are similar to those in s. 61.512, F.S., part of this state's UCCJEA.

Section 13 specifies the elements that a court must consider when determining "significant-connection factors." When a court is determining whether a respondent has a significant connection with a particular state, the court must consider the following:

- The location of the respondent's family and other persons required to be notified of the guardianship proceeding.
- The length of time that the respondent was physically present in the state at any point in time and the duration of any absence.
- The location of the respondent's property.
- The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationships, and receipt of services. (s. 744.81, F.S.)

Section 14 states that this Part IX provides the exclusive jurisdictional basis for a court of this state to appoint a guardian for an adult. (s. 744.82, F.S.) Accordingly, this state would have

¹² *Id.*, at 12.

jurisdiction if this state is the home state for an alleged incapacitated person and may have jurisdiction if it is a significant-connection state.

Moreover, the bill would be a limit on the venue provision in existing s. 744.1097(1), F.S., which states that the venue for proceedings for determination of incapacity could be in the county where the alleged incapacitate person is “found.”

Section 15 addresses the issue of jurisdiction. The National Conference of Commissioners of Uniform State Laws explains that the primary objective of this provision is to eliminate the possibility of dual appointments or orders. The act creates a three-level priority scheme for deciding which state has jurisdiction to appoint a guardian. The first priority is the home state, followed by a state where the respondent has significant connections, and then other jurisdictions.¹³

This section provides that a court of this state has jurisdiction to determine incapacity, appoint a guardian, or undertake similar proceedings if *any* of the following applies:

- This state is the respondent’s home state.
- On the date a petition is filed, this state is a significant-connection state and:
 - The respondent does not have a home state, or a court of the respondent’s home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
 - The respondent has a home state but a petition for an appointment or order is not pending in a court of that state or another significant-connection state, *and* before the court of this state makes the appointment or issues an order:
 - A petition to determine incapacity, appoint a guardian, or other similar proceeding is not filed in the respondent’s home state;
 - An objection to the jurisdiction of the court of this state is not filed by a person required to be notified of the proceeding; and
 - The court of this state concludes that it is the appropriate forum after considering the factors set forth in s. 744.86, F.S.
- This state does not have jurisdiction under the above criteria, the respondent’s home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the State Constitution and the United States Constitution.
- The requirements for special jurisdiction under s. 744.84, F.S., are met. (s. 744.83, F.S.)

Section 16 lists the special circumstances in which a court that does not have jurisdiction under s. 744.83, F.S., is granted special jurisdiction, which is jurisdiction for limited purposes. A court of this state has jurisdiction to do the following:

- In accordance with the guardianship chapter, appoint an emergency temporary guardian for a person who is physically present in this state.
- Appoint a guardian for an incapacitated person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of an emergency temporary guardian is brought in this state but this state was not the respondent’s home state on the date that the petition was filed, the court

¹³ *Id.*, at 18.

must dismiss the proceeding at the request of the court of the home state, if any such request is made, only after a hearing and judicial determination of the appropriate forum of the alleged incapacitated person based on those factors as set forth in s. 744.86, F.S., whether by the home state or this state. If, after the hearing, the home state and this state differ in their determination of which state is the appropriate forum, the home state's determination will prevail, whether dismissal is requested before or after the emergency appointment. (s. 744.84, F.S.)

Section 17 establishes exclusive and continuing jurisdiction. Except as otherwise provided in s. 744.84, F.S., a court that appoints a guardian consistent with this part has exclusive and continuing jurisdiction over the proceeding, but only until:

- A determination is made as to the proper jurisdiction of the action;
- The jurisdiction is terminated by the court; or
- The appointment or order expires by its own terms. (s. 744.85, F.S.)

Section 18 provides the criteria for determining the appropriate forum for a guardianship. A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum. If a court of this state declines to exercise its jurisdiction it must dismiss or stay the proceeding. The court may impose any condition that it considers just and proper, including requiring that a petition for the appointment of a guardian or issuance of a similar petition be filed promptly in another state.

In determining whether it is an appropriate forum, the court must consider all relevant factors, which include:

- Any expressed preference of the respondent.
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation.
- The length of time the respondent was physically present in or was a legal resident of this or another state.
- The distance of the respondent from the court in each state.
- The financial circumstances of the respondent's estate.
- The nature and location of the evidence.
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- The familiarity of the court of each state with the facts and issues in the proceeding.
- If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator. (s. 744.86, F.S.)

The provisions of this section are similar to those of s. 61.520, F.S., of this state's UCCJEA. Courts of this state may decline to exercise jurisdiction over a child custody matter if, based on a number of factors, the court of another state is a more appropriate forum.

Section 19 explains when jurisdiction may be declined due to someone's conduct. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may:

- Decline to exercise jurisdiction; or

- Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or protecting the respondent's property, or both, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction.

If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful conduct, the court may assess that person necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this part. (s. 744.87, F.S.)

The provisions of this section have similarities to s. 61.521, F.S., of this state's UCCJEA.

Section 20 describes the required notice for guardianship proceedings. If a petition for the appointment of a guardian is brought in this state but this state is not the respondent's home state on the date that the petition is filed, the petitioner must provide notice of the petition to those persons who would be entitled to notice of the petition both in this state and in the respondent's home state. (s. 744.88, F.S.)

Section 21 explains what must happen when guardianship proceedings are filed in more than one state. Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- If the court of this state has jurisdiction under this chapter, it may proceed with the case unless a court of another state acquires jurisdiction *before* the appointment of the guardian or the issuance of the order.
- If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination, whether at the time the petition is filed or at any time before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum. (s. 744.89, F.S.)

The procedures of this section are similar to the procedures in s. 61.519, F.S., of this state's UCCJEA, addressing simultaneous child custody proceedings in more than one state.

Section 22 explains how a guardianship must be *transferred* to another state. A guardian appointed in this state may petition the court to transfer the guardianship to another state. However, notice of a petition must be given to all parties who would be entitled to notice of a petition in this state for the appointment of a guardian or a petition for a change of residence of the ward.

On the court's own motion or upon the request of the guardian, the incapacitated person, or both, the court must hold a hearing on a petition filed as described above. The court may issue an order

provisionally granting a petition to transfer a guardianship and must direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will likely be accepted by the court of the other state *and* the court finds that:

- The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the best interests of the incapacitated person; and
- Plans for the care and services for the incapacitated person in the other state are reasonable and sufficient.

The court must issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

- A provisional order accepting the proceeding from the court to which the proceeding is to be transferred and issued under provisions similar to s. 744.89, F.S.; and
- The documents required, including any required accountings, to terminate a guardianship in this state.

The guardian of the ward in this state must file a petition for discharge in accordance with part VII of ch. 744 within 60 days after receipt of an order confirming the transfer of the guardianship to another jurisdiction. (s. 744.90, F.S.)

Section 23 provides how a guardianship is *accepted* in this state when it is transferred from another state. Within 60 days after the residence of a ward of a foreign guardian is moved to this state, the foreign guardian appointed in another state must file a petition to determine incapacity and a petition to appoint a guardian with the clerk of court in the county in which the ward resides. The petitions must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

Notice of the petitions must be given to those persons who would be entitled to notice in this state in the same manner that notice is required to be given in this state and in the respondent's home state. The court must hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

The court must issue orders provisionally granting the petitions unless:

- An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or
- The guardian is ineligible for appointment in this state.

Until a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. However, a foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

After appointment of a guardian in this state, the court may issue the orders necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

The authority of the guardian of a nonresident ward shall be recognized and given full faith and credit in the courts of this state. A guardian appointed in another state or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state. (s. 744.92, F.S.)

Section 24 governs the registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardianship is not pending in this state, the guardian appointed in the other state, after giving notice of the appointment to the appointing court of the intent to register, may register the guardianship order in this state by filing it as a foreign judgment in a court of this state pursuant to ss. 744.307 and 744.308. (s. 744.92, F.S.)

Section 25 speaks to the effect of registering a guardianship order from another state. Upon the registration of a guardianship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment, except as prohibited under the laws of this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties. (s. 744.93, F.S.)

Section 26 addresses the need for uniformity of application and construction. When this part is applied and construed, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (s. 744.94, F.S.)

Section 27 explains the relationship of this act to the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). E-SIGN contains a unique provision allowing reverse-preemption by state laws based on the Uniform Electronic Transactions Act (UETA). Florida adopted UETA in 2000. Since 2000, all uniform acts that could potentially involve electronic transactions contain this language. By enacting this section, any electronic signatures or transactions related to the new act will be governed by Florida law, s. 668.50, F.S., rather than by federal law.

Section 28 addresses the application date of this part. This newly created part in ch. 744, F.S., applies to guardianship and similar proceedings filed on or after July 1, 2022.

Orders Not to Resuscitate (Sections 2-4)

Section 2 involves the initial guardianship plan. Section 744.363(1)(f), F.S., is amended to provide that, if a preexisting order not to resuscitate is disclosed in an initial guardianship plan approved by a court, and the order has not been suspended by the court, a plenary guardian or a limited guardian may sign an order not to resuscitate without additional court approval. This provision should avoid emergency situations and allow a ward's wishes to be honored from the beginning of a guardianship appointment.

Section 3 addresses the Annual Guardianship Plan. Section 744.3675, F.S., is similarly amended to provide that, if a preexisting order not to resuscitate is disclosed in an annual guardianship

plan approved by a court, and the order has not been suspended by the court, a plenary guardian or a limited guardian may sign an order not to resuscitate without additional court approval. This language is also intended to avoid emergency situation and allow the ward's wishes to be honored.

Section 4 speaks to the Powers of a Guardian Upon Court Approval. Section 744.441(2), F.S., is amended to authorize a guardian to consent to an order not to resuscitate being placed in a ward's chart by a physician if the hospital ethics committee has met and agrees with the entry and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek court approval. Within 72 hours after signing the order or consenting to the order, the guardian must file notice of the action with the court and provide accompanying documentation that supports the decision or a copy of the court's order after the preliminary hearing.

Section 1 is a technical conforming change. The deletions made to s. 744.306, F.S., dealing with foreign guardians, are necessary to conform to changes made in the Florida Guardianship Jurisdiction Act.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By enacting provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and its criteria for determining the most appropriate state to exercise jurisdiction over a guardianship matter, there may be a disincentive for persons to commence guardianship proceedings in an inappropriate forum. This in turn may reduce litigation costs that often reduce the assets of a ward or alleged incapacitated person which would otherwise be available for his or her care and needs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For clarity, the Legislature may wish to consolidate the provisions of the bill related to orders not to resuscitate into a single section of statute.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 744.74, 744.75, 744.76, 744.77, 744.78, 744.79, 744.80, 744.81, 744.82, 744.83, 744.84, 744.85, 744.86, 744.87, 744.88, 744.89, 744.90, 744.91, 744.92, 744.93, 744.94, and 744.95.

The bill amends the following sections of the Florida Statutes: 744.306, 744.363, 744.3675, and 744.441.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 24, 2022:

The committee substitute differs from the underlying bill by adding four new sections at the beginning of the bill.

- Section 1 is a deletion that is a technical conforming change needed to conform existing law to the new Florida Guardianship Jurisdiction Act.
- Section 2 permits a guardian to sign an order not to resuscitate a ward without additional court approval if the preexisting order not to resuscitate was included in the initial guardianship plan and has not been suspended by the court.
- Section 3 similarly permits a guardian to sign an order not to resuscitate a ward without prior court approval if the preexisting order not to resuscitate was disclosed in a court approved annual guardianship plan and has not been suspended by the court.

- Section 4 authorizes a guardian to consent to an order not to resuscitate being placed in a ward's chart by a physician, if the hospital ethics committee agrees with the entry, and the ward is in a hospital and exigent circumstances exist which do not allow enough time for the guardian to seek court approval. Within 72 hours after signing the order or consenting to the order being placed in the ward's chart, the guardian must file notice of the action with the court and provide accompanying documentation.

B. Amendments:

None.



956564

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Children, Families, and Elder Affairs (Burgess)
recommended the following:

Senate Amendment

Delete lines 168 - 197
and insert:

Section 4. Subsection (2) of section 744.441, Florida
Statutes, is amended to read

744.441 Powers of guardian upon court approval.—After
obtaining approval of the court pursuant to a petition for
authorization to act:

(2) (a) A plenary guardian or a limited guardian of a ward



956564

11 may sign an order not to resuscitate as provided in s. 401.45(3)
12 for a ward who does not have such an order in effect. When
13 ~~seeking a plenary guardian or a limited guardian of a ward seeks~~
14 ~~to obtain~~ approval of the court to sign an order not to
15 resuscitate, if required by exigent circumstances, the court
16 must hold a preliminary hearing within 72 hours after the
17 petition is filed, and:

18 1. ~~(a)~~ Rule on the relief requested immediately after the
19 preliminary hearing; or

20 2. ~~(b)~~ Conduct an evidentiary hearing not later than 4 days
21 after the preliminary hearing and rule on the relief requested
22 immediately after the evidentiary hearing.

23 (b)1. Notwithstanding paragraph (a), if the ward is
24 hospitalized and exigent circumstances exist which do not allow
25 time for the guardian to seek court approval under paragraph
26 (a), without prior court approval, the guardian may sign an
27 order not to resuscitate on behalf of the ward and consent to
28 the order being entered in the ward's chart by a physician
29 provided the hospital ethics committee has met and agrees with
30 the entry of an order not to resuscitate.

31 2. As soon as reasonable, and not more than 72 hours after
32 signing an order not to resuscitate and consenting to the order
33 being entered in the ward's chart, the guardian must file notice
34 of such action with the court along with documentation
35 supporting the decision.

By Senator Brodeur

9-00763B-22

20221040__

A bill to be entitled
An act relating to the registry of persons with
special needs; providing a short title; creating s.
402.88, F.S.; requiring the Agency for Persons with
Disabilities to develop and maintain a database, to be
known as the Registry of Persons with Special Needs,
for a specified purpose; providing for enrollment in
the registry; specifying information the registry may
include; requiring the Department of Law Enforcement
to provide relevant information from the registry to
law enforcement officers upon request through a
specified system; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Protect Our Loved
Ones Act."

Section 2. Section 402.88, Florida Statutes, is created to
read:

402.88 Registry of persons with special needs in law
enforcement interactions.—

(1) The Agency for Persons with Disabilities shall develop
and maintain a database, to be known as the "Registry of Persons
with Special Needs," of persons who may have developmental,
psychological, or other disabilities or conditions that may be
relevant to their interactions with law enforcement officers.
Parents, guardians, and caregivers may enroll in the registry a
person of any age with any type of developmental, psychological,
or other disability or condition, including, but not limited to,

9-00763B-22

20221040__

autism spectrum disorder, Alzheimer's disease, dementia, bipolar disorder, and Down syndrome. Persons may also enroll themselves if they are 18 years of age or older. The registry may include, but need not be limited to, any of the following information:

(a) An enrollee's name, contact information, personal identifying information, and disability or condition that may be relevant to interactions with law enforcement officers.

(b) If a person did not enroll themselves, the name, contact information, and personal identifying information of the parent, guardian, or caregiver who enrolled the person in the registry.

(c) Any additional information provided by an enrollee or an enrollee's parent, guardian, or caregiver.

(d) Any information requested by the Agency for Persons with Disabilities or the Department of Law Enforcement or otherwise held by a law enforcement agency, a county emergency management agency, or a local fire department for the purpose of assisting law enforcement officers, emergency medical personnel, or fire personnel in responding to a call for service.

(2) The Department of Law Enforcement shall provide information from the registry to law enforcement officers to assist officers in the performance of their official duties. The registry shall provide such relevant information to a law enforcement officer engaged in his or her official duties upon an officer's request made through the Florida Crime Information Center.

Section 3. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1040

INTRODUCER: Senator Brodeur

SUBJECT: Registry of Persons with Special Needs

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1040, known as the “Protect Our Loved Ones” Act, requires the Agency for Persons with Disabilities (the APD) to develop and maintain a database, known as the “Registry of Persons with Special Needs,” of persons who may have developmental, psychological, or other disabilities or conditions.

Parents, guardians, and caregivers may voluntarily enroll individuals in the registry. The registry may include:

- An enrollee’s demographic and contact information;
- Contact information of caregivers who have enrolled individuals on the registry;
- Any additional information provided by an enrollee or their caregiver; and
- Certain information requested by the APD or the Florida Department of Law Enforcement (FDLE).

The bill requires FDLE to provide information from the registry to law enforcement officers to assist in performance of their official duties.

The costs of creating and maintaining the registry will likely lead to a significant fiscal impact on the APD. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Developmental Disabilities

The APD serves more than 58,000 Floridians with developmental disabilities including autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.¹

Cerebral palsy² is a group of disabling symptoms of extended duration, which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles.³

Spina bifida⁴ is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.⁵

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.⁶ Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.⁷

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.⁸

¹ Agency for Persons with Disabilities, *Long-Range Program Plan (2021)*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited February 3, 2022) (hereinafter cited as “The Long-Range Plan”).

² Section 393.063(6), F.S.

³ *Id.*

⁴ Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.

⁵ The Long-Range Plan, p. 79.

⁶ Section 393.063(24), F.S. For the purposes of this definition, the term “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term “significantly sub-average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

⁷ *Id.* at 73.

⁸ *Id.* Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.

Prader-Willi syndrome⁹ is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.¹⁰

Phelan-McDermid syndrome¹¹ is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.¹²

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.¹³ Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.¹⁴ The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.¹⁵ The CDC also estimates that over 5.4 million adults have ASD.¹⁶

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.¹⁷ Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation

⁹ Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.

¹⁰ *Id.*

¹¹ Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.

¹² *Id.*

¹³ Section 393.063(5), F.S.

¹⁴ Section 627.6686(2)(b), F.S.

¹⁵ The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last visited February 3, 2022).

¹⁶ The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last visited February 3, 2022).

¹⁷ Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, Child and Family Law Journal, p. 48 (2018), available at <https://lawpublications.barry.edu/cflj/vol6/iss1/3> (last visited February 3, 2022).

poses a particular problem in encounters with law enforcement.¹⁸ Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.¹⁹ Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.²⁰ The individual may cover his or her ears and shriek, not knowing how or where to get help.²¹ The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.²²

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.²³

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.²⁴ Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.²⁵ During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.²⁶

¹⁸ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, AeL Monthly Law Journal, p. 106 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last visited February 3, 2022).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited February 4, 2022).

²⁴ *Id.*

²⁵ National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited Feb.4, 2022).

²⁶ *Id.*

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.²⁷

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.²⁸

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.²⁹ The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.³⁰

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.³¹ Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.³²

Florida Crime Information Center (FCIC) System

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.³³

²⁷ See National Alliance Mental Illness, *Mental Health Disorders*, available at <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312> (all sites last visited February 5, 2022).

²⁸ Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, p. 69, available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last visited February 3, 2022).

²⁹ The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).

³⁰ *Id.*

³¹ Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).

³² *Id.*

³³ The FDLE, *The FCIC*, available at <https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited February 3, 2022).

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.³⁴ Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.³⁵

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.³⁶

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.³⁷

Project Safe and Sound

In 2007, the Polk County Sheriff's Office began utilizing a voluntary registry system, called Project Safe and Sound (PSS), which provides bracelets to registrants in an effort to help identify wandering individuals with Alzheimer's disease.³⁸ Caregivers choosing to participate are asked to complete an application/authorization form which requires specific information about the child or adult being registered.³⁹ The agency then enters the information into the PSS database, making the information accessible to all Polk County first responders.⁴⁰ After the information is entered, the special needs person will be issued a "Safe & Sound" bracelet, which includes an assigned number.⁴¹ The bracelet also includes emergency contact information engraved on the plate of the bracelet.⁴² In the event a special needs child or adult wanders off and is found, responding law enforcement personnel will be able to contact PCSO and confirm the identity of

³⁴ The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022)(hereinafter cited as "The IACP Guide").

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 3.

³⁸ *Id.* at 24.

³⁹ Polk County Sheriff's Office, *Project Safe & Sound*, available at <http://www.polksheriff.org/programs-services/crime-prevention-programs-for-adults/project-safe-sound> (last visited February 3, 2022).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

the individual.⁴³ First responders will be provided the caregiver's contact information so that the special needs person can be reunited with their caregiver.⁴⁴

Existing grant monies were re-apportioned to the Office of Communications to build and sustain PSS.⁴⁵ The program leverages a partnership with a local engraver who engraves PSS bracelets with ID numbers at no cost for the program.⁴⁶

III. Effect of Proposed Changes:

The bill creates s. 402.88, F.S., providing that the bill may be cited as the "Protect Our Loved Ones Act." The bill requires the APD to develop and maintain a database, known as the "Registry of Persons with Special Needs," of persons who may have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers, including but not limited to:

- Autism spectrum disorder;
- Alzheimer's disease;
- Dementia;
- Bipolar disorder; and
- Down syndrome.

Parents, guardians, and caregivers may voluntarily enroll individuals in the registry, and persons 18 and older may self-enroll. The registry may include:

- An enrollee's demographic and contact information;
- Contact information of those who have enrolled individuals on the registry;
- Any additional information provided by an enrollee or their caregiver; and
- Any information requested by the APD or the FDLE or otherwise held by a:
 - Law enforcement agency;
 - County emergency management agency; or
 - Local fire department for the purpose of assisting any of the following in responding to call for service:
 - Assisting law enforcement officers;
 - Emergency medical personnel; or
 - Fire personnel.

The bill requires the FDLE to provide relevant information from the registry to law enforcement officers in performance of their official duties. The bill also requires the APD to provide such information to a law enforcement officer engaged in their duties upon an officer's request made through the FCIC.

The information provided to law enforcement officers under the bill may assist officers by preparing them to respectfully and appropriately interact with an individual enrolled in the registry who has a relevant condition.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The IACP Guide at 32.

⁴⁶ *Id.* at 24.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The APD anticipates that the bill will require the agency to hire 34 FTEs at a cost of \$3,614,510 (\$3,243,672 recurring and \$370,838 nonrecurring).⁴⁷ Initial system design and development is anticipated to cost \$2 million.⁴⁸ Annual system maintenance costs are estimated at \$720,000, and the total impact is estimated to be approximately \$6.4 million, with a recurring impact of \$4 million.⁴⁹

⁴⁷ The APD, *Agency Analysis of HB 733*, p. 4. (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴⁸ *Id.*

⁴⁹ *Id.*

VI. Technical Deficiencies:

The bill does not give the APD rulemaking authority to develop the registry or specific requirements necessary to participate.⁵⁰ The APD states that rulemaking authority would be necessary since it is outside the scope of the APD's current authority.⁵¹ The bill also directs information to be submitted to the APD, but does not provide guidance on how information requested would be solicited or transmitted.⁵²

The FDLE recommends changed the effective date to March 1, 2023 as it predicts that it cannot complete programming changes needed to implement the bill's requirements by July 1, 2022.⁵³

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 402.88 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁵⁰ *Id.* at 2.

⁵¹ *Id.*

⁵² *Id.*

⁵³ FDLE, *Agency Analysis of SB 1040*, January 7, 2022, p. 4. (on file with the Senate Children, Families, and Elder Affairs Committee).



443230

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Children, Families, and Elder Affairs (Brodeur)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Protect Our Loved
Ones Act."

Section 2. Section 402.88, Florida Statutes, is created to
read:

402.88 Special Persons Registry for interactions with law
enforcement.—



443230

(1) The Department of Health shall develop and maintain a database, to be known as the "Special Persons Registry," of persons who may have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers. Parents, guardians, and caregivers may enroll in the registry a person of any age with any type of developmental, psychological, or other disability or condition, including, but not limited to, autism spectrum disorder, Alzheimer's disease, dementia, bipolar disorder, and Down syndrome. Persons may also enroll themselves if they are 18 years of age or older. The registry may include, but need not be limited to, any of the following information:

(a) An enrollee's name, contact information, personal identifying information, and disability or condition that may be relevant to interactions with law enforcement officers.

(b) If a person did not enroll themselves, the name, contact information, and personal identifying information of the parent, guardian, or caregiver who enrolled the person in the registry.

(c) Any additional information provided by an enrollee or an enrollee's parent, guardian, or caregiver.

(d) Any information requested by the Department of Health or the Department of Law Enforcement or otherwise held by a law enforcement agency, a county emergency management agency, or a local fire department for the purpose of assisting law enforcement officers, emergency medical personnel, or fire personnel in responding to a call for service.

(2) The Department of Law Enforcement shall provide information from the registry to law enforcement officers to



443230

assist officers in the performance of their official duties. The registry shall provide such relevant information to a law enforcement officer engaged in his or her official duties upon an officer's request made through the Florida Crime Information Center.

Section 3. This act shall take effect March 1, 2023.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the Special Persons Registry;
providing a short title; creating s. 402.88, F.S.;
requiring the Department of Health to develop and
maintain a database, to be known as the "Special
Persons Registry," for a specified purpose; providing
for enrollment in the registry; specifying information
the registry may include; requiring the Department of
Law Enforcement to provide relevant information from
the registry to law enforcement officers upon request
through a specified system; providing an effective
date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1042

INTRODUCER: Senator Brodeur

SUBJECT: Public Records/Registry of Persons with Special Needs

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1042 creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for the following information relating to the enrollment of individuals on the Registry of Persons with Special Needs (RPSN) created by SB 1040:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the RPSN. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides that the act shall take effect on the same date that an unidentified bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 1040 has an effective date of July 1, 2022.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Developmental Disabilities

The APD serves more than 58,000 Floridians with developmental disabilities including autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.²⁷

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.²⁸ Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.²⁹ The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.³⁰ The CDC also estimates that over 5.4 million adults have ASD.³¹

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.³² Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.³³ Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.³⁴ Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.³⁵ The individual may cover his or her ears and shriek, not knowing how or where to get help.³⁶ The presence of police lights and sirens,

²⁶ Section 119.15(7), F.S.

²⁷ Agency for Persons with Disabilities, *Long-Range Program Plan (2021)*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited February 3, 2022).

²⁸ Section 393.063(5), F.S.

²⁹ Section 627.6686(2)(b), F.S.

³⁰ The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last visited February 3, 2022).

³¹ The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last visited February 3, 2022).

³² Randy Lambert "How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community," *Child and Family Law Journal*, p. 48 (2018), available at <https://lawpublications.barry.edu/cflj/vol6/iss1/3> (last visited February 3, 2022).

³³ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, *AeL Monthly Law Journal*, p. 106 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last visited February 3, 2022).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.³⁷

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.³⁸

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.³⁹ The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.⁴⁰

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.⁴¹ Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.⁴²

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.⁴³ Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources (human and financial) during emergencies;
- Give community members peace of mind; and

³⁷ *Id.*

³⁸ Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last visited February 3, 2022).

³⁹ The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited February 3, 2022).

⁴⁰ *Id.*

⁴¹ Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited February 3, 2022).

⁴² *Id.*

⁴³ The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited February 3, 2022) (hereinafter cited as "The IACP Guide").

- Promote community partnerships in responding to special needs community members.⁴⁴

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.⁴⁵

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/ hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.⁴⁶

Confidentiality of Information

Voluntary registry systems generally contain large amounts of personal and sensitive information. Confidentiality concerns, coupled with a general fear of law enforcement prevalent in some communities, could hinder community willingness to participate in voluntary registry programs.⁴⁷ Some community members may be hesitant to participate due to fear exploitation of registry data.⁴⁸ Others fear that registry information collected may be used to violate the rights of special needs individuals by inappropriately releasing the information to outside parties and entities.⁴⁹

Some agencies utilizing voluntary registry systems use disclaimers, waivers, or releases on voluntary registry systems' registration forms or questionnaires to notify registrants that providing data is voluntary and to ensure that registrants and their caregivers know that information will be used solely for the purpose of assisting first responders in providing service.⁵⁰ Other individuals have also expressed concerns regarding Health Insurance Portability and Accountability Act (HIPAA) compliance of registry information collection and storage.⁵¹

III. Effect of Proposed Changes:

The bill amends the proposed s. 402.88, F.S., which would be created by SB 1040. The bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for the following information relating to the enrollment of individuals on the Registry of Persons with Special Needs (RPSN) created by SB 1040:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ The IACP Guide at 21.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The bill also applies the exemption to any locally maintained registry that is substantially similar to the RPSN. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department.

Any of the above-listed agency entities are permitted to disclose information otherwise deemed confidential and exempt by the bill to others not specifically listed only under the following circumstances:

- With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
- In a medical emergency;
- By court order upon a finding of good cause;
- To another governmental agency when needed for the performance of its duties and responsibilities; or
- In the interest of public safety, to;
 - Assist in locating the enrollee; or
 - Promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

The bill includes a public necessity statement, specifying the need to make all records, data, information, correspondence, and communications relating the enrollment of persons in the RPSN confidential and exempt from Florida's public records laws. The bill provides that such records are likely to include confidential medical information and sensitive personal information of individuals on the RPSN. The bill states that the potential disclosure of such information will deter enrollment, thereby depriving law enforcement of information which would enable them to interact with those eligible for enrollment in safe and appropriate ways.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill provides that the act shall take effect on the same date that an unspecified bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 1040 has an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records, data, information, correspondence, and communication relating to the enrollment of individuals on the RPSN. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect sensitive personal information, and confidential medical information, of individuals enrolled in the RPSN. This bill exempts only such information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not appear to give the APD the option or ability to request information from any other agencies who have information as contemplated in SB 1040.⁵²

VIII. Statutes Affected:

This bill substantially amends section 402.88 of the Florida Statutes, if created by SB 1040.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁵² The APD, *Agency Analysis of HB 735*, p. 2. (on file with the Senate Children, Families, and Elder Affairs Committee).



105446

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Children, Families, and Elder Affairs (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 56

and insert:

402.88 Special Persons Registry for interactions with law enforcement; public records exemption.—

(3) (a) All records, data, information, correspondence, and communications relating to the enrollment of persons as provided in subsection (1) and such information included in any locally maintained registry that is substantially similar to the



105446

registry in subsection (1) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except, upon request, to a law enforcement agency, a county emergency management agency, or a local fire department, or as otherwise specifically authorized by this section.

(b) A law enforcement agency, county emergency management agency, or local fire department in possession of materials described in paragraph (a) may further disclose information contained in such materials to others not specifically listed only as follows:

1. With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
2. In a medical emergency;
3. By court order upon a finding of good cause;
4. To another governmental agency in the performance of its duties and responsibilities; or
5. In the interest of public safety, to assist in locating the enrollee, or to promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make all records, data, information, correspondence, and communications relating to the enrollment of persons in the Special Persons Registry under s.



105446

40
41 ===== T I T L E A M E N D M E N T =====
42 And the title is amended as follows:
43 Delete lines 6 - 7
44 and insert:
45 enrollment of persons in the Special Persons Registry;
46 providing exceptions; authorizing law

By the Committee on Criminal Justice; and Senator Gibson

591-02595-22

20221244c1

A bill to be entitled

An act relating to statutes of limitations for sexual offenses; amending s. 775.15, F.S.; eliminating statutes of limitations periods for prosecution of specified sexual offenses; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (21) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(21) (a) The prosecution for a violation of any of the following may be commenced at any time:

1. Chapter 794, except for a violation of s. 794.024, s. 794.027, s. 794.03, or s. 794.075;

2. Section 800.04(7)(a)3.; or

3. Section 827.071(2) or (3).

(b) This subsection applies to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

Section 2. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1244

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Statutes of Limitations for Sexual Offenses

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.	Moody	Cox	CF	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1244 amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, with specified exceptions;
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

Section 775.15, F.S., sets forth time limitations for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The general time limitations for the prosecution of offenses are based upon the degree of offense, however there are multiple exceptions to the general time limitations.

The bill is effective July 1, 2022.

II. Present Situation:

Statute of Limitations

Historical Perspective

At common law, there was no time limitation under which a criminal charge was barred from prosecution. Time limitations for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the State.¹

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may apply time limitations retroactively without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶
- Courts have recently upheld extensions of time limitations for sexual battery when the amendment takes effect before the case was procedurally barred.⁷

¹ *State v. Hickman*, 189 So. 2d 254, 261-62 (Fla. 2d DCA 1966).

² *Id.*

³ *Beyer v. State*, 76 So.3d 1132, 1134 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

⁶ *Schargschwerdt v. Kanerek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989), citing *Andrews v. State*, 392 So.2d 270 (Fla. 2d DCA 1980), rev. denied, 399 So.2d 114 (Fla. 1981); See also *United States v. Richardson*, 512 F. 2d 105, 106 (3rd Cir. 1975); *Smith v. State*, 213 So.3d 722, 1740 (Fla. 2017).

⁷ *Brown v. State*, 179 So. 3d 466, 468 (Fla. 4th DCA 2015) (The court affirmed the conviction for one count of sexual battery on a victim less than 16 years of age. The abuse occurred between May 1997 and July 1998. The abuse was reported November 15, 1999. The State brought charges against the defendant in 2011. The Statute of limitation in effect at the time of the offense would have barred prosecution in November 2003; however, the Legislature amended the statute of limitations in October 2003 to provide no time limitation for the offense for which the defendant was charged. Because the case was not barred at the time the amended statute of limitations went into effect, the court held that the statute of limitation was properly extended and did not violate the ex post facto clause).

Existing Provisions

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁸

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.⁹
- A 4-year time limitation for prosecuting a first degree felony.¹⁰
- A 3-year time limitation for prosecuting a second or third degree felony.¹¹

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. These exceptions apply, in part, to violations of s. 794.011, F.S., relating to sexual battery, and violations of s. 800.04, F.S., relating to lewd and lascivious offenses. These exceptions include:

- No time limitation for prosecuting:
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;¹²
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;¹³
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;¹⁴
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;¹⁵
 - Any sexual battery offense, when the victim is younger than 18 years of age when the offense was committed, and the offense was committed on or after July 1, 2020.¹⁶
 - A violation of s. 800.04(4) or (5), F.S., relating to lewd or lascivious battery or molestation, when the victim was under 16 years of age at the time of the offense, and the offense was not barred from prosecution on or before October 1, 2014. This exception to

⁸ Section 775.15(3), F.S.

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 775.15(13)(a), F.S.

¹³ Section 775.15(13)(b), F.S.

¹⁴ Section 775.15(13)(c), F.S.

¹⁵ Section 775.15(14)(a), F.S.

¹⁶ Section 775.15(20), F.S.

- the time limitation does not apply if the offender is less than 18 years of age and no more than 4 years older than the victim.¹⁷
- There is an eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense provided the offense was not barred from prosecution on or before July 1, 2015, except for:
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours; or
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003.¹⁸

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,¹⁹ including sexual battery, and lewd or lascivious offenses, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.²⁰ This exception applies to offenses that are not otherwise barred on or after July 1, 2006.^{21, 22}

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery, lewd or lascivious offense, or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.²³

Sexually Related Offenses

Sexual Battery

Chapter 794, F.S., contains numerous sections of law relating to sexual battery. Felony crimes contained in the chapter include:

- Section 794.011, F.S., provides that “sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.²⁴ Sexual battery offenses are categorized by certain factors including the

¹⁷ Section 775.15(18), F.S.

¹⁸ Section 775.15(14)(b), F.S.

¹⁹ Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.

²⁰ Section 775.15(16)(a), F.S.

²¹ Section 775.15(16)(b), F.S.

²² *Bryson v. State*, 42 So. 3d 852 (Fla. 1st DCA 2010) (holding that the appellants prosecution was not barred, and that s. 775.15(16), F.S., could be applied because appellant's case was not barred at the time that section was enacted).

²³ Section 775.15(13)(a), F.S.

²⁴ Section 794.011(1)(h), F.S.

offender's age, the victim's age, and specified circumstances. Generally, absent any specified circumstances, a sexual battery is a second degree felony.²⁵

- Section 794.08, F.S., provides criminal penalties related to female genital mutilation.²⁶
- Section 794.05, F.S., provides that a person who is 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a second degree felony.²⁷

Chapter 794, F.S., also contains the following misdemeanor crimes:

- Section 794.024, F.S., provides that it is a second degree misdemeanor²⁸ for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of specified offenses to willfully and knowingly disclose that information, except to specified persons or entities.²⁹
- Section 794.027, F.S., provides that it is a first degree misdemeanor³⁰ to observe the commission of a sexual battery and fail to seek assistance.³¹
- Section 794.03, F.S., provides that it is a second degree misdemeanor, except in certain circumstances, for a person to print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense under ch. 794, F.S.
- Section 794.075, F.S., provides that it is a second degree misdemeanor for a first offense, and a first degree misdemeanor for a second or subsequent offense, for a designated sexual predator to possess a drug for the purpose of treating erectile dysfunction.

Additionally, ch. 794, F.S., provides various sections of law relating to sexual battery but do not contain misdemeanor or felony offenses. For example, s. 794.026, F.S., provides a victim with a civil cause of action against a person or entity who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information about the victim of any sexual offense under ch. 794 or ch. 800, F.S.

Lewd and Lascivious Offenses

Section 800.04, F.S., contains numerous offenses relating to lewd or lascivious offenses committed on or in the presence of a person younger than 16 years of age.

Section 800.04(7)(a), F.S., provides that a person commits a lewd or lascivious exhibition when he or she, in the presence of a victim who is younger than 16 years of age, intentionally:

²⁵ The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁶ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.08, F.S.

²⁷ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.05, F.S.

²⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁹ Section 794.024, F.S., specific offenses include a violation of ch. 794, ch. 800, ss. 827.03, 827.04, or 827.071, F.S.; specified persons or entities include a person assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, a person specified in a court order, an organization authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.

³⁰ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³¹ Section 794.027, F.S.

- Masturbates;³²
- Exposes the genitals in a lewd or lascivious manner;³³ or
- Commits any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.³⁴

Sexual Performance by a Child

Section 827.071, F.S., specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. It is a second degree felony for a person:

- Knowing the character and content thereof, to employ, authorize, or induce a child to engage in a sexual performance.^{35, 36}
- Who is a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.³⁷
- Knowing the character and content, to produce, direct, or promote³⁸ any performance which includes sexual conduct by a child.³⁹

III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, except:
 - Section 794.024, F.S., relating to unlawful to disclose identifying information;
 - Section 794.027, F.S., relating to duty to report sexual battery; penalties;
 - Section 794.03, F.S., relating to unlawful to publish or broadcast information identifying sexual offense victim; and
 - Section 794.075, F.S., relating to sexual predators; erectile dysfunction drugs.
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

The bill is effective July 1, 2022.

³² Section 800.04(7)(a)1., F.S.

³³ Section 800.04(7)(a)2., F.S.

³⁴ Section 800.04(7)(a)3., F.S.

³⁵ Section 827.071(2), F.S.

³⁶ Section 827.071(1)(c), F.S., provides “performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

³⁷ Section 827.071(2), F.S.

³⁸ Section 827.071(1)(d), F.S., provides “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.

³⁹ Section 827.071(3), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not reviewed the bill at this time. However, the bill will likely have a positive indeterminate (unquantifiable positive prison bed) impact on the Department of Corrections due to removing the time limitation for prosecution of these offenses. There may be individuals in the future who are prosecuted, who would have otherwise been barred from prosecution without the changes made in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 1, 2022:

The committee substitute removes s. 794.026, F.S., from the list of exceptions provided in the bill. Additionally, the bill removes unnecessary language to clarify the applicability of the bill.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Jones

35-01103-22

20221404__

A bill to be entitled
An act relating to school counselors; providing a short title; amending s. 1006.025, F.S.; requiring certified school counselors to provide services within the context of a program developed by the Department of Education using a specified framework; authorizing certified school counselors to deliver specified services; authorizing certified school counselors to perform additional duties required of all instructional personnel during the school year; authorizing certified school counselors to oversee classes only under certain circumstances; prohibiting certified school counselors from performing certain tasks; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "School Counselors Supporting Students Act."

Section 2. Section 1006.025, Florida Statutes, is amended to read:

1006.025 Certified school counselors ~~Guidance services.~~

(1) A certified school counselor shall deliver services within the context of a student-centered, data-informed, and outcome-oriented program developed by the Department of Education which is integrated into curricula and which prepares public school students in prekindergarten through grade 12 for postsecondary education and training or a career. The department

35-01103-22

20221404__

shall use Florida's School Counseling Framework in developing
the program.

(2) A certified school counselor may deliver all of the
following services:

(a) Offer advisement appraisal for academic planning,
including for postsecondary education, and career coaching.

(b) Provide orientation, coordination, and academic
advising for new students.

(c) Interpret cognitive aptitude and achievement test
results and support school administrators, parents, and students
in understanding them.

(d) Counsel students who are tardy or absent.

(e) Provide mental health services to students, including,
but not limited to: individual and small group counseling,
including short-term counseling; suicide screenings and
assessments; and collaboration with other school personnel,
medical professionals, and community-based partners to provide
referrals to both students and their families.

(f) Support students' social and emotional learning through
classroom lessons and counseling.

(g) Consult with teachers to schedule and present school
counseling curriculum lessons based on developmental needs. Such
needs must be determined using data analyzed by certified school
counselors.

(h) Interpret student records and protect such records and
information as required by state and federal rules and
regulations.

(i) Analyze grade point averages and their relationship to
student achievement.

35-01103-22

20221404__

59 (j) Consult with teachers about building class connections,
60 effective classroom management, and the role of noncognitive
61 factors in student success.

62 (k) Consult with a variety of stakeholders, including
63 school principals, classroom teachers, parents, student services
64 personnel, and other school personnel, to identify and resolve
65 student issues, needs, and problems.

66 (l) Advocate for exceptional students by participating in,
67 but not leading, individual education plan meetings, student
68 study teams, responses to intervention plans, 504 meetings,
69 multitiered systems of support, and school attendance review
70 boards.

71 (m) Analyze disaggregated schoolwide and school counseling
72 program data for the purpose of delivery of programs and
73 strategies to improve school successes.

74 (n) With input from students of diverse backgrounds, work
75 to create a positive and inclusive school culture for all
76 students.

77 (3) A certified school counselor may perform additional
78 duties required of all instructional personnel during the school
79 year, such as supervision of common areas before or after school
80 or during the lunch hour; however, a school counselor may
81 oversee classes only when teachers are absent or when necessary
82 to create teacher planning time.

83 (4) Certified school counselors may not:

84 (a) Perform administrative personnel tasks, such as
85 building the master schedule.

86 (b) Be school test coordinators.

87 (c) Perform purely clerical work of coordinating paperwork

35-01103-22

20221404__

and data entry unrelated to school counseling.

(5) Annually by June 30, each district school board shall ~~annually~~ submit to the Commissioner of Education a district guidance report, which must ~~to the Commissioner of Education by June 30.~~

~~(2) The guidance report shall~~ include, but need not be limited to, the following:

(a) An examination of student access to certified school counselors.

(b) The degree to which a district has adopted or implemented a guidance model program.

(c) Evaluation of the information and training available to certified school counselors and career specialists to advise students on areas of critical need, labor market trends, and technical training requirements.

(d) Any progress made in incorporating ~~toward incorporation of~~ best practices for advisement, as identified by the department.

(e) Any consideration of alternative guidance systems or ideas, including, but not limited to, a teacher-advisor model, mentoring, partnerships with the business community, web-based delivery, and parental involvement.

(f) A district guidance plan ~~for the district.~~

~~(6)(3)~~ The department shall provide resources to district school boards which ~~that~~ may assist districts in preparing the annual guidance report. The resources must ~~shall~~ include, but need ~~are~~ not be limited to, materials relating to guidance model programs, training available through the department for career guidance, adopted best practices, alternative guidance systems

35-01103-22

20221404__

117 or ideas, and a model district guidance plan.

118 Section 3. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1404

INTRODUCER: Senator Jones

SUBJECT: School Counselors

DATE: February 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Palazes	Bouck	ED	Favorable
2. Preston	Cox	CF	Pre-meeting
3. _____	_____	RC	_____

I. Summary:

SB 1404 establishes the “School Counselors Supporting Students Act” and clarifies the responsibilities for school counselors in Florida’s schools and prohibits school counselors from performing certain school-related tasks. The bill requires the Florida Department of Education to develop a program using Florida’s School Counseling Framework for certified school counselors that deliver services within the context of a student-centered, data-informed, and outcome-oriented program. The program is required to integrate into curricula, which prepares public school students in prekindergarten through grade 12 for postsecondary education and training or a career.

The bill takes effect on July 1, 2022.

II. Present Situation:

School Counselors

School Counselors are certified/licensed educators who improve student success for all students by implementing a comprehensive school counseling program.¹ They are responsible for designing and delivering school counseling programs that improve student outcomes² and are trained to be proactive, data driven, and considered essential in the school improvement process.³

¹American School Counselor Association, *The Role of the School Counselor*, (2021), available at <https://www.schoolcounselor.org/getmedia/ee8b2e1b-d021-4575-982c-c84402cb2cd2/Role-Statement.pdf>.

² *Id.*

³American School Counselor Association, *Guidance Counselor vs School Counselor*, (2019), available at <https://www.schoolcounselor.org/getmedia/c8d97962-905f-4a33-958b-744a770d71c6/Guidance-Counselor-vs-School-Counselor.pdf>.

The primary goal for school counselors is to encourage, support, and foster positive academic, career, social, and personal development for students in schools.⁴

School Counselors in Florida

Certification Requirements for School Counselors

School counselors are considered instructional personnel within Florida's public school system.⁵ To be employed as a school counselor, a person must be certified as required by law and State Board of Education (SBE) rule.⁶ To be certified as a school counselor an individual must have:⁷

- A master's or higher degree with a graduate major in guidance and counseling or school counseling that includes a minimum of 600 clock hours of supervised internship serving school-aged students in a prekindergarten, an elementary or a secondary school setting; or
- A master's or higher degree with a graduate major in counseling, but not guidance and counseling or school counseling, that includes a minimum of 600 clock hours of supervised internship with school-aged children and their families with at least nine semester hours of specified graduate credit.

In the 2020-21 school year, there were 6,397 guidance counselors working in Florida school districts. Each of the 67 school districts reported at least one guidance counselor on staff.⁸

School Counselor's role in Florida's Schools

The core duties of school counselors in Florida include, providing individual counseling and advising to help students set personal goals, provide academic advising with course selection and graduation requirements, and work with teachers and school administrators to ensure student needs are being met.⁹ School counselors focus their skills, time and energy on direct and indirect services to students.¹⁰ Direct counseling services are in-person interactions between school counselors and students which include:¹¹

- School counseling core curriculum, which are structured lessons delivered in the school's curriculum to help students attain desired competencies;
- Individual Student Planning, which are activities to assist students in establishing personal goals and future plans; and

⁴The Florida Department of Education, *Florida's School Counseling Framework*, at 15 (2010), available at <https://www.fldoe.org/core/fileparse.php/7690/urlt/0070167-finalcounselframework2010.pdf>.

⁵ Section 1012.01(2)(b), F.S.

⁶ Section 1012.55(1)(b), F.S.

⁷ Rule 6A-4.0181, F.A.C. if a candidate is earning certification on the second pathway the 9 hours of graduate credit to include: Student appraisal and evaluation methods; College and career planning; Principles, philosophy, organization and administration of a comprehensive school counseling program; Consultation skills and techniques for conferring with groups.

⁸The Florida Department of Education, *Staff in Florida's Public Schools: Full-Time Staff Activity Assignment 2020-21, Final Survey*, (2021) available at <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.html>.

⁹ The Florida Department of Education, *Florida's School Counseling Framework*, at 15 (2010), available at <https://www.fldoe.org/core/fileparse.php/7690/urlt/0070167-finalcounselframework2010.pdf>.

¹⁰ American School Counselor Association, *ASCA National Model A Framework for School Counseling Programs*, (2015), available at <https://www.mlsd.net/Downloads/ANMExecSumm.pdf>.

¹¹ Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of School Counselors*, (2015), available at <https://www.fl-schoollcounselor.org/wp-content/uploads/2017/04/OPPAGA-Report.pdf>.

- Responsive Services, which are activities designed to meet students' needs, such as counseling in individual or small-groups or crisis response.

Indirect Counseling Services are services provided on behalf of students as a result of the school counselors' interactions with others including referrals for additional assistance, and consultation and collaboration with parents.¹²

A 2015 report showed that 71 percent of school counselors spent their time on direct and indirect counseling services and 29 percent on non-counseling duties. The top five duties that were non-counseling related were:¹³

- Student testing/assessment;
- Coordinating 504¹⁴ meetings;
- Attendance duty;
- Cafeteria duty; and
- Hallway supervision.

Florida's School Counseling Framework

Florida's School Counseling Framework (Framework) represents the continuing evolution of prekindergarten–12 school counseling programs. Historically, many school counselors spent much of their time responding to the needs of a small percentage of their students, typically the high achieving or high risk. The Framework recommends that the majority of the school counselor's time be spent in direct service to all students so that every student receives maximum benefits from the program.¹⁵ When first articulated in 1995, this model represented a departure from prior "guidance" program concepts to one that is comprehensive in scope, preventative in design, and developmental in nature. The Framework has been increasingly used by districts to structure their school counseling programs to include a standards-based student development curriculum and activities.¹⁶ The Framework is organized around 15 program standards based on the American School Counselor Association's structure. The 15 program standards are organized into four areas:¹⁷

- Foundation:
 - Mission Statement;
 - Rationale and Philosophy; and
 - Student Standards and Competencies.
- Management System:
 - District Policy;
 - Advisory Council;

¹² Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of School Counselors*, (2015), available at <https://www.fl-schoollcounselor.org/wp-content/uploads/2017/04/OPPAGA-Report.pdf>.

¹³ *Id.*

¹⁴ Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. U.S. Department of Education, *Protecting Students with Disabilities*, available at <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited Jan. 31, 2022).

¹⁵ The Florida Department of Education, *Florida's School Counseling Framework*, at 9 (2010), available at <https://www.fldoe.org/core/fileparse.php/7690/urlt/0070167-finalcounselframework2010.pdf>, at 13.

¹⁶ The Florida Department of Education, *Florida's School Counseling Framework*, at 9 (2010), available at <https://www.fldoe.org/core/fileparse.php/7690/urlt/0070167-finalcounselframework2010.pdf>.

¹⁷ *Id.* at 21

- Program Resources;
- Use of Time; and
- Calendars.
- Delivery System:
 - Curriculum;
 - Individual Student Planning;
 - Responsive Services; and
 - Systems Support.
- Accountability:
 - Use of Data;
 - Program Evaluation; and
 - School Counselor Standards.

III. Effect of Proposed Changes:

SB 1404 creates s. 1006.025, F.S., to specify roles and responsibilities for school counselors in Florida's schools. The bill requires the Department of Education to develop a program using Florida's School Counseling Framework for certified school counselors that deliver services within the context of a student-centered, data-informed, and outcome-oriented program. The program is required to integrate into curricula and which prepares public school students in prekindergarten through grade 12 for postsecondary education and training or a career.

Specifically, the bill provides that certified school counselor may deliver all of the following services:

- Offer advisement appraisal for academic planning, including for postsecondary education, and career coaching.
- Provide orientation, coordination, and academic advising for new students.
- Interpret cognitive aptitude and achievement test results and support school administrators, parents, and students in understanding them.
- Counsel students who are tardy or absent.
- Provide mental health services to students, including, but not limited to: individual and small group counseling, including short-term counseling; suicide screenings and assessments; and collaboration with other school personnel, medical professionals, and community-based partners to provide referrals to both students and their families.
- Support students' social and emotional learning through classroom lessons and counseling.
- Consult with teachers to schedule and present school counseling curriculum lessons based on developmental needs. Such needs must be determined using data analyzed by certified school counselors.
- Interpret student records and protect such records and information as required by state and federal rules and regulations.
- Analyze grade point averages and their relationship to student achievement.
- Consult with teachers about building class connections, effective classroom management, and the role of noncognitive factors in student success.
- Consult with a variety of stakeholders, including school principals, classroom teachers, parents, student services personnel, and other school personnel, to identify and resolve student issues, needs, and problems.

- Advocate for exceptional students by participating in, but not leading, individual education plan meetings, student study teams, responses to intervention plans, 504 meetings, multitiered systems of support, and school attendance review boards.
- Analyze disaggregated schoolwide and school counseling program data for the purpose of delivery of programs and strategies to improve school successes.
- With input from students of diverse backgrounds, work to create a positive and inclusive school culture for all students.

The bill provides that a certified school counselor may perform additional duties required of all instructional personnel during the school year, such as supervision of common areas before or after school or during the lunch hour; however, a school counselor may oversee classes only when teachers are absent or when necessary to create teacher planning time.

The bill requires specifies that a certified school counselor may not:

- Perform administrative personnel tasks, such as building the master schedule;
- Be school test coordinators; and
- Perform purely clerical work of coordinating paperwork and data entry unrelated to school counseling.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.025 of the Florida Statutes.

The bill creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



504780

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Children, Families, and Elder Affairs (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1012.461, Florida Statutes, is created
to read:

1012.461 Certified school counselors; authorized duties.—

(1) Certified school counselors must, at a minimum, hold
the certificate required by law and by rule of the State Board
of Education pursuant to s. 1012.55(1)(b). Certified school



504780

counselors must abide by the American School Counselor Association's Ethical Standards for School Counselors and provide a student-centered, data-informed, and outcome-oriented program that is integrated into the curricula and prepares students in prekindergarten through grade 12 for postsecondary education and training or a career. The program must be designed using the Department of Education's Florida's School Counseling Framework. School principals must use certified school counselors to deliver appropriate direct and indirect services to students pursuant to the American School Counselor Association's national model. Such delivery of services means working directly with students, instructional personnel, school administrators, parents, other school personnel, and the community to achieve an integrated approach to students' educational success and an effective transition to postsecondary education and training or a career and may include services recommended by the American School Counselor Association. A certified school counselor may perform the following duties, which are recommended by the American School Counselor Association:

(a) Advisement appraisal for academic planning, including, but not limited to, for postsecondary education and training or career coaching.

(b) Orientation, coordination, and academic advising for new students. However, a certified school counselor may not perform the clerical duties of coordinating paperwork or data entry for such students.

(c) Interpreting and supporting school administrators, instructional personnel, students, and students' parents in



504780

understanding students' cognitive, aptitude, and achievement tests. However, a certified school counselor may not serve as a testing coordinator.

(d) Providing counseling to students who are late to or absent from school.

(e) Providing mental health supports to students, including, but not limited to, individual and small group counseling, including short-term counseling; mental health services; suicide screenings and assessments; and collaborating with other school personnel, medical professionals, and community-based partners to provide referrals to both students and their families.

(f) Supporting students' social and emotional learning through classroom lessons and counseling.

(g) Consulting with classroom teachers to schedule and present school counseling curriculum lessons based on students' developmental needs. Such needs must be determined using data analyzed by certified school counselors.

(h) Interpreting students' records and, pursuant to state and federal law, rule, and regulation, protecting students' records and information. A certified school counselor must focus on delivering direct services to students and may not perform clerical duties, including, but not limited to, maintaining students' records, maintaining students' cumulative folders, or inputting students' grades.

(i) Analyzing students' grade point averages and their relationship to students' achievement.

(j) Consulting with classroom teachers about building classroom connections, managing effective classrooms, and the



504780

69 role of noncognitive factors in students' success.

70 (k) Consulting with a variety of stakeholders including,
71 but not limited to, school principals and other school
72 administrators, instructional personnel, parents, student
73 services personnel, and other school personnel to identify and
74 resolve students' issues, needs, and problems. A certified
75 school counselor must be a nonjudgmental advocate for students,
76 rather than a disciplinarian, and may not perform administrator-
77 specific duties, including, but not limited to, building the
78 master schedule.

79 (l) Advocating for students by participating as a team
80 member, but not as a team leader, in individual education plan
81 meetings, student study teams, responses to intervention plans,
82 Section 504 plan meetings, multitiered systems of support, and
83 school attendance review boards.

84 (m) Analyzing disaggregated schoolwide and school
85 counseling program data for the delivery of programs and
86 strategies to improve school success.

87 (n) Working with students of diverse backgrounds to create
88 a positive and inclusive school culture for all students.

89 (2) A certified school counselor may also perform the
90 following additional duties if such duties are required to be
91 performed by the majority of instructional personnel during the
92 school year:

93 (a) Covering classrooms when classroom teachers are absent
94 or creating planning times for classroom teachers.

95 (b) Supervising common areas, including, but not limited
96 to, the school's cafeteria during lunch periods or the areas
97 where school buses drop off or pick up students before or after



504780

school.

Section 2. This act shall take effect July 1, 2022.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to certified school counselors;
creating s. 1012.461, F.S.; providing certification
requirements for school counselors; requiring
certified school counselors to provide a certain
program for a specified purpose; providing program
requirements; authorizing such counselors to perform
certain duties; prohibiting such counselors from
performing certain duties; authorizing such counselors
to perform specified additional duties under certain
circumstances; providing an effective date.

By the Committee on Judiciary; and Senators Perry and Rouson

590-02248-22

20221408c1

A bill to be entitled

An act relating to grandparent visitation rights;
amending s. 752.011, F.S.; creating a presumption for
maternal or paternal grandparent or stepgrandparent
visitation of a child under certain circumstances;
providing a burden for overcoming such presumption;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (2) through (11) of section
752.011, Florida Statutes, are redesignated as subsections (3)
through (12), respectively, a new subsection (2) is added to
that section, and present subsections (4) and (5) of that
section are amended, to read:

752.011 Petition for grandparent visitation with a minor
child.—A grandparent of a minor child whose parents are
deceased, missing, or in a persistent vegetative state, or whose
one parent is deceased, missing, or in a persistent vegetative
state and whose other parent has been convicted of a felony or
an offense of violence evincing behavior that poses a
substantial threat of harm to the minor child's health or
welfare, may petition the court for court-ordered visitation
with the grandchild under this section.

(2) Notwithstanding subsection (1), if the court finds that
one parent of a child has been held criminally or civilly liable
for the death of the other parent of the child, there is a
presumption for granting reasonable visitation with the
petitioning grandparent or stepgrandparent if he or she is the

590-02248-22

20221408c1

parent of the child's deceased parent. This presumption may be overcome only if the court finds that granting such visitation is not in the best interests of the child.

(5)~~(4)~~ In assessing the best interests ~~interest~~ of the child under subsection (4) ~~(3)~~, the court shall consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

(a) The love, affection, and other emotional ties existing between the minor child and the grandparent, including those resulting from the relationship that had been previously allowed by the child's parent.

(b) The length and quality of the previous relationship between the minor child and the grandparent, including the extent to which the grandparent was involved in providing regular care and support for the child.

(c) Whether the grandparent established ongoing personal contact with the minor child before the death of the parent, before the onset of the parent's persistent vegetative state, or before the parent was missing.

(d) The reasons cited by the respondent parent in ending contact or visitation between the minor child and the grandparent.

(e) Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm.

(f) The existence or threat to the minor child of mental injury as defined in s. 39.01.

590-02248-22

20221408c1

59 (g) The present mental, physical, and emotional health of
60 the minor child.

61 (h) The present mental, physical, and emotional health of
62 the grandparent.

63 (i) The recommendations of the minor child's guardian ad
64 litem, if one is appointed.

65 (j) The result of any psychological evaluation of the minor
66 child.

67 (k) The preference of the minor child if the child is
68 determined to be of sufficient maturity to express a preference.

69 (l) A written testamentary statement by the deceased parent
70 regarding visitation with the grandparent. The absence of a
71 testamentary statement is not deemed to provide evidence that
72 the deceased or missing parent or parent in a persistent
73 vegetative state would have objected to the requested
74 visitation.

75 (m) Other factors that the court considers necessary to
76 making its determination.

77 (6) ~~(5)~~ In assessing material harm to the parent-child
78 relationship under subsection (4) ~~(3)~~, the court shall consider
79 the totality of the circumstances affecting the parent-child
80 relationship, including:

81 (a) Whether there have been previous disputes between the
82 grandparent and the parent over childrearing or other matters
83 related to the care and upbringing of the minor child.

84 (b) Whether visitation would materially interfere with or
85 compromise parental authority.

86 (c) Whether visitation can be arranged in a manner that
87 does not materially detract from the parent-child relationship,

590-02248-22

20221408c1

88 including the quantity of time available for enjoyment of the
89 parent-child relationship and any other consideration related to
90 disruption of the schedule and routine of the parent and the
91 minor child.

92 (d) Whether visitation is being sought for the primary
93 purpose of continuing or establishing a relationship with the
94 minor child with the intent that the child benefit from the
95 relationship.

96 (e) Whether the requested visitation would expose the minor
97 child to conduct, moral standards, experiences, or other factors
98 that are inconsistent with influences provided by the parent.

99 (f) The nature of the relationship between the child's
100 parent and the grandparent.

101 (g) The reasons cited by the parent in ending contact or
102 visitation between the minor child and the grandparent which was
103 previously allowed by the parent.

104 (h) The psychological toll of visitation disputes on the
105 minor child.

106 (i) Other factors that the court considers necessary in
107 making its determination.

108 Section 2. This act shall take effect July 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1408

INTRODUCER: Judiciary Committee and Senator Perry and others

SUBJECT: Grandparent Visitation Rights

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1408 amends Florida’s “Grandparental Visitation Rights” law to include an additional situation where a grandparent may petition for reasonable visitation with his or her grandchild.

Specifically, the bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption would only apply to the grandparents who are the parents of the grandchild’s deceased parent. A court may decline to grant these visitation rights if visitation is not in the best interest of the child.

The bill takes effect July 1, 2022.

II. Present Situation:

Grandparent Visitation Rights

While parental rights have a well-founded history in U.S. legal system, grandparent’s rights are, in comparison, a more recent development. Under the common law, grandparents had no standard legal right to visit their grandchildren. Grandparent visitation rights began to gain

prominence in the 1960s, and today every state in the union has some form of grandparent visitation standard.¹

Colorado, for example, allows grandparents to request visitation rights in child custody cases or cases concerning the allocation of parental responsibilities, including those cases where a parent has become deceased.² Connecticut authorizes visitation if the grandparent can prove by clear and convincing evidence that a parent-like relationship exists between the grandparent and the minor and that denial of such visitation would cause real and significant harm.³ Georgia authorizes a court to award visitation rights in to any grandparent who is the parent of a deceased, incapacitated, or incarcerated⁴ parent and specifically provides that parental objection to such visitation is merely given deference and is not conclusive to the court's decision.⁵

Similar to the national trend with grandparent's visitation rights, Florida has had a long history with grandparent visitation legislation. In 1978, the Legislature adopted grandparent visitation legislation allowing courts to award grandparent visitation rights in dissolution of marriage proceedings under s. 61.1306(1), F.S (1977).⁶ This provision, under ch. 61, F.S., was eventually repealed after courts ruled that grandparents lacked standing to petition in such dissolution of marriage cases.⁷

In 1984, the Legislature enacted ch. 752, F.S., titled "Grandparents Visitation Rights," granting grandparents standing to petition the court for visitation in certain limited situations.⁸ In 1993, ch. 752, F.S., was further amended to grant grandparents standing to file an action for visitation

¹ Sarah Elizabeth Culley, *Troxel v. Granville and its Effect on the Future of Grandparent Visitation Statutes; Legislative Reform*, JOURNAL OF LEGISLATION, Vol. 27:1, at 238, available at <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg> (last visited Feb. 3, 2022).

² Colo. Rev. Stat. Ann. s. 19-1-117. This sections specifically defines "case concerning the allocation of parental responsibilities with respect to a child" to include situations where: a parent has died, the marriage of the child's parents has been declared invalid or dissolved by a court, or legal custody or parental responsibility has been given or allocated to a party other than the child's parent.

³ Conn. Gen. Stat. Ann. s. 46b-59. The Supreme Court of Connecticut has held "When an otherwise fit parent denies his or her child access to an individual who has a parent-like relationship with the child and the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm, the State has a compelling interest in protecting the child's own complementary interest in preserving parent-like relationships that serve the child's welfare by avoiding the serious and immediate harm to the child that would result from the parent's decision to terminate or impair the child's relationship with the third party." *Boisvert v. Gavis*, 210 A.3d 1, 15 (Conn. 2019)(citing to that child *Roth v. Weston*, 789 A.2d 431, 445 (Conn. 2002)).

⁴ Ga. Code Ann. s. 19-7-3(d). The Supreme Court of Georgia has ruled, however, that this provision still requires proof by clear and convincing evidence of actual or threatened harm to the child in order to override an otherwise fit parents objection. *Patten v. Ardis*, 816 S.E.2d 633, 637 (Ga. 2018).

⁵ Ga. Code Ann. s. 19-7-3(c)(3) provides that "a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some minimal opportunity for contact with his or her family member when there is a preexisting relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption."

⁶ Section 61.1306(1), F.S. (1977).

⁷ *Shuler v. Shuler*, 371 So. 2d 588, 590 (Fla. 1st DCA 1979).

⁸ Specifically, s. 752.01(1) (a)-(c), F.S. (1993) allowed visitation to be awarded if the court determined it to be in the best interests of the child and one of the following circumstances existed: (1) one or both of the child's parents were deceased, (2) the parents are divorced, (3) one parent had deserted the child, or (4) the child was born out of wedlock.

rights in situations where the family was still intact, but one or both of the parents “used their parental authority to prohibit a relationship between the minor child and the grandparents.”⁹ The constitutionality of this new subsection was specifically addressed in the 1996 case *Beagle v. Beagle*.¹⁰ In *Beagle*, the Florida Supreme Court ruled that this subsection was facially unconstitutional and did not satisfy *strict scrutiny*, holding that under Florida’s *privacy clause*¹¹ “the State may not intrude upon the parents’ fundamental right to raise their children except in cases where the child is threatened with harm.”¹²

In 2000, the Florida Supreme Court addressed the constitutionality of a 1997 amendment to ch. 61, F.S., which gave a grandparent the right to intervene in a custody dispute involving their grandchild if the grandparent could prove (1) that the grandchild was residing with them and (2) that the grandchild had a stable relationship with them. The court ruled that this amended section was unconstitutional because it allowed courts to make custody decisions based solely on the best interest of the child and placed the legal interests of the grandparent as equal to those of the parents.¹³ Finally, the court again addressed grandparent’s rights in 2004, invalidating another amendment to ch. 61, F.S., which authorized courts in dissolution of marriage proceedings to award a grandparent reasonable visitation with their grandchild if it was in the child’s best interest.¹⁴

Currently, statutes relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. As previously discussed, ch. 61, F.S., has had various different grandparent rights provisions, but each has been repealed by the Legislature as a result of litigation. Chapter 752, F.S., titled “Grandparental Visitation Rights” allows for visitation to be awarded when a minor child’s parents are deceased, missing, or in a permanent vegetative state.¹⁵ If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must also find the grandparent has made a *prima facie* showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

Dependency Proceedings

A dependent child is a child found by a court to have been abandoned, abused, or neglected by the child’s parents or other custodians.¹⁶ The Department of Children and Families (DCF) is responsible for providing care, safety and protection to the dependent children in its care. One of the most essential functions of the DCF is to achieve *permanency*, that is, to find a permanent

⁹ Section 752.01(1)(e), F.S. (1995).

¹⁰ 678 So. 2d 1271, 1276 (Fla. 1996).

¹¹ Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the persons private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

¹² *Beagle*, 678 So. 2d at 1276.

¹³ *Richardson v. Richardson*, 766 So. 2d 1036, 1039 (Fla. 2000).

¹⁴ *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: “The court may award the grandparents visitation rights with a minor child if it is in the child’s best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants.”

¹⁵ Section 752.011, F.S.

¹⁶ Sections 39.01(14)(a)-(f) and 984.03(12)(a)-(f), F.S. Additionally, dependent children may be those who are surrendered, voluntarily placed with adoption agencies, have no legal guardian, or are at a substantial risk of imminent abuse or neglect by the parent or parents of the custodian.

stable environment in which to place the child. Florida courts have a large role in supervising a child's case through the dependency and, when appropriate, the adoption process. Section 39.812(3), F.S., provides [t]he court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted." Additionally, courts are required to enter any orders the court deems necessary and suitable to promote and protect the best interests of a child to be adopted.¹⁷

The Legislative Intent of Part IV of ch. 39, F.S., titled "Taking Children into Custody and Shelter Hearings" specifically provides that:

Every child in out-of-home care be afforded the advantages that can be gained from the use of family finding to establish caring and long-term or permanent connections and relationships for children and youth in out-of-home care, as well as to establish a long-term emotional support network with family members and other adults who may not be able to take the child into their home but who want to stay connected with the child.¹⁸

Consistent with the above legislative intent, grandparents often play an important role in the dependency system. Nationwide, 2.7 million grandparents are raising grandchildren and nearly half of all children living with their grandchildren are under the age of 6.¹⁹ When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless it is not in the best interest of the child or would interfere with the goals of the case plan.²⁰ These rights do not cease even if the court enters an order for termination of the child's parental rights. Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.

III. Effect of Proposed Changes:

The bill amends ch. 752, F.S., titled "Grandparental Visitation Rights," to allow a grandparent to petition for reasonable visitation with his or her grandchild in a narrow set of circumstances.

The bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption for visitation rights applies only to a grandparent who is a parent of the grandchild's deceased parent. This presumption may be overcome if the court finds that granting such visitation is not in the best interests of the child.

The bill applies to both biological grandparents, as well as step-grandparents.

¹⁷ Section 63.022(4)(k), F.S.

¹⁸ Section 39.04015(1)(e), F.S.

¹⁹ Children Now, *A Focus on Grandparents, The 2020 Census is Underway*, (Apr. 27, 2020) available at <https://www.childrennow.org/blog/2020-census/> (last visited Feb. 3, 2022).

²⁰ Section 39.509, F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has recognized the fundamental liberty interests involved in the “care, custody and management” of their children.²¹ The Florida Supreme Court has likewise recognized that decisions related to parenting are fundamental rights within the Fourteenth Amendment of the United States Constitution and the liberty interests under the privacy clause of the State Constitution.²² Any statute that infringes on these rights is subject to the highest level of judicial scrutiny, and the government must prove that the statute in question serves a compelling government interest through the least intrusive means necessary.

As discussed in the Current Situation section, grandparent visitation legislation has frequently been litigated and invalidated in this state. Some legislative efforts have been scrutinized by the courts for interfering with the fundamental rights of parents or for forcing courts to replace parental decisions with their own judgement. As discussed in the Florida Supreme Court’s 1996 *Beagle* decision, the issue with much of the previous legislation concerned the fact that the legislation allowed for the courts to intervene even when there was no showing of harm to a child.

In comparison to some previous legislative efforts, however, the bill is much more narrowly tailored, and potentially distinguishable from the invalidated statutes.

²¹ *Troxel*, 530 U.S. 57, 65 (2000).

²² See s. 61.1306(1), F.S. (1977) and *Shuler*, 371 So.2d at 591; and accompanying text.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 752.011, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 24, 2022

The CS revises the bill to be consistent with the House companion. The original Senate bill authorized additional grandparent rights in the context of a dependency proceeding. The CS authorizes a grandparent to be granted visitation with a grandchild in a narrow set of circumstances, but the grandchild need not be a subject of a dependency proceeding.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Book

591-02274A-22

20221798c1

A bill to be entitled
An act relating to sexually explicit material;
amending s. 775.0847, F.S.; redefining terms;
replacing the term "child pornography" with the term
"child sexual abuse material"; defining the term
"identifiable minor"; revising the list of
circumstances under which specified offenses may be
reclassified; amending s. 784.049, F.S.; increasing
the monetary damages that an aggrieved person may
receive as a result of violations relating to sexual
cyberharassment; amending s. 827.071, F.S.; defining
and redefining terms; conforming provisions to changes
made by the act; creating s. 836.13, F.S.; defining
terms; prohibiting the willful and malicious promotion
of certain images without consent; providing criminal
penalties; providing a civil cause of action;
providing applicability; providing construction;
creating s. 836.14, F.S.; defining terms; prohibiting
a person from obtaining certain images with the intent
to promote such images; prohibiting the possession of
certain images with intent to promote without consent;
prohibiting the promotion of certain images without
consent; providing criminal penalties; providing a
civil cause of action; providing applicability;
providing construction; amending s. 847.001, F.S.;
redefining terms; replacing the term "child
pornography" with the term "child sexual abuse
material"; defining the terms "identifiable minor" and
"promote"; amending 847.011; authorizing law

591-02274A-22

20221798c1

enforcement officers to arrest certain persons without a warrant; authorizing a search warrant to be issued for further investigation upon proper affidavits being made; amending 847.0137, F.S.; deleting the definition of the term "minor"; redefining the term "transmit"; conforming provisions to changes made by the act; amending s. 921.0022, F.S.; ranking offenses created by this act for purposes of the severity ranking chart of the Criminal Punishment Code; conforming provisions to changes made by the act; amending s. 960.03, F.S.; replacing the term "child pornography" with the term "child sexual abuse material"; conforming provisions to changes made by the act; amending ss. 288.1254 and 847.0141, F.S.; conforming cross-references; amending ss. 39.0138, 92.56, 92.561, 435.07, 456.074, 847.002, 847.01357, 847.0139, 948.06, and 960.197, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.0847, Florida Statutes, is amended to read:

775.0847 Possession or promotion of certain child sexual abuse material ~~images of child pornography~~; reclassification.—

(1) For purposes of this section:

(a) "Child" or "minor" means any person, whose identity is known or unknown, younger ~~less~~ than 18 years of age.

(b) "Child sexual abuse material" ~~"Child pornography"~~

591-02274A-22

20221798c1

means:

1. Any image depicting a minor engaged in sexual conduct;
or

2. Any image that has been created, altered, adapted, or
modified by electronic, mechanical, or other means, to portray
an identifiable minor engaged in sexual conduct.

(c) "Identifiable minor" means a person:

1. Who was a minor at the time the image was created,
adapted, or modified, or whose image as a minor was used in the
creating, adapting, or modifying of the image; and

2. Who is recognizable as an actual person by the person's
face, likeness, or other distinguishing characteristic, such as
a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual
identity of the identifiable minor.

(d) ~~(e)~~ "Sadomasochistic abuse" means flagellation or
torture by or upon a person or the condition of being fettered,
bound, or otherwise physically restrained, for the purpose of
deriving sexual satisfaction, or satisfaction brought about as a
result of sadistic violence, from inflicting harm on another or
receiving such harm oneself.

(e) ~~(d)~~ "Sexual battery" means oral, anal, or vaginal
penetration by, or union with, the sexual organ of another or
the anal or vaginal penetration of another by any other object;
however, sexual battery does not include an act done for a bona
fide medical purpose.

(f) ~~(e)~~ "Sexual bestiality" means any sexual act, actual or
simulated, between a person and an animal involving the sex

591-02274A-22

20221798c1

organ of the one and the mouth, anus, or vagina of the other.

(g) ~~(f)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(2) A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138 shall be reclassified to the next higher degree as provided in subsection (3) if:

(a) The offender possesses 10 or more images of any form of child sexual abuse material ~~child pornography~~ regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.

2. Sadomasochistic abuse involving a child.

3. Sexual battery involving a child.

4. Sexual bestiality involving a child.

5. Any motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video ~~movie~~ contains sound.

591-02274A-22

20221798c1

(3) (a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. Paragraph (b) of subsection (5) of section 784.049, Florida Statutes, is amended to read:

784.049 Sexual cyberharassment.—

(5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(b) Monetary damages to include \$10,000 ~~\$5,000~~ or actual damages incurred as a result of a violation of this section, whichever is greater.

Section 3. Section 827.071, Florida Statutes, is amended to read:

827.071 Sexual performance by a child; child sexual abuse material; penalties.—

(1) As used in this section, the following definitions shall apply:

(a) "Child" or "minor" means any person, whose identity is known or unknown, younger than 18 years of age.

(b) "Child sexual abuse material" means:

591-02274A-22

20221798c1

146 1. Any image depicting a minor engaged in sexual conduct;
147 or

148 2. Any image that has been created, altered, adapted, or
149 modified by electronic, mechanical, or other means, to portray
150 an identifiable minor engaged in sexual conduct.

151 (c)~~(a)~~ "Deviate sexual intercourse" means sexual conduct
152 between persons not married to each other consisting of contact
153 between the penis and the anus, the mouth and the penis, or the
154 mouth and the vulva.

155 (d) "Identifiable minor" means a person:

156 1. Who was a minor at the time the image was created,
157 adapted, or modified, or whose image as a minor was used in the
158 creating, adapting, or modifying of the image; and

159 2. Who is recognizable as an actual person by the person's
160 face, likeness, or other distinguishing characteristic, such as
161 a unique birthmark, or other recognizable feature.

162
163 The term may not be construed to require proof of the actual
164 identity of the identifiable minor.

165 (e)~~(b)~~ "Intentionally view" means to deliberately,
166 purposefully, and voluntarily view. Proof of intentional viewing
167 requires establishing more than a single image, motion picture,
168 exhibition, show, image, data, computer depiction,
169 representation, or other presentation over any period of time.

170 (f)~~(c)~~ "Performance" means any play, motion picture,
171 photograph, or dance or any other visual representation
172 exhibited before an audience.

173 (g)~~(d)~~ "Promote" means to procure, manufacture, issue,
174 sell, give, provide, lend, mail, deliver, transfer, transmit,

591-02274A-22

20221798c1

transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(h)~~(e)~~ "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(i)~~(f)~~ "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(j)~~(g)~~ "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(k)~~(h)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(l)~~(i)~~ "Sexual performance" means any performance or part thereof which includes sexual conduct by a child ~~of less than 18~~

591-02274A-22

20221798c1

years of age.

(m) ~~(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph (k) ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child ~~less than 18 years of age~~ to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child ~~less than 18 years of age~~. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child sexual abuse material ~~any sexual conduct by a child~~. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. A person who ~~Whoever~~ violates this subsection commits ~~is guilty of~~ a felony

591-02274A-22

20221798c1

of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child sexual abuse material ~~any sexual conduct by a child~~. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child sexual abuse material depicting ~~sexual conduct by~~ more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this paragraph ~~subsection~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Paragraph (a) ~~This subsection~~ does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of a ~~any~~ person for an offense under this section does ~~shall~~ not prohibit prosecution of that person in this state for a violation of any other law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual

591-02274A-22

20221798c1

performance or the sexual exploitation of children.

Section 4. Section 836.13, Florida Statutes, is created to read:

836.13 Promotion of an altered sexual depiction; prohibited acts; penalties; applicability.—

(1) As used in this section, the term:

(a) "Altered sexual depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

1. With the nude body parts of another person as the nude body parts of the identifiable person;

2. With computer-generated nude body parts as the nude body parts of the identifiable person; or

3. Engaging in sexual conduct as defined in s. 847.001 in which the identifiable person did not engage.

(b) "Identifiable person" means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

(c) "Nude body parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby.

(d) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit,

591-02274A-22

20221798c1

transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

(e) "Visual depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or representation, regardless of whether such photograph, picture, image, motion picture, film, video, or representation was made, modified, altered, adapted, or produced by digital, electronic, mechanical, or other means.

(2) A person who willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Every act, thing, or transaction prohibited by this section constitutes a separate offense and is punishable as such.

(4) The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability under this section.

(5) An aggrieved person may initiate a civil action against a person who violates subsection (2) to obtain appropriate relief in order to prevent or remedy a violation of subsection (2), including all of the following:

591-02274A-22

20221798c1

(a) Injunctive relief.

(b) Monetary damages to include \$10,000 or actual damages incurred as a result of a violation of subsection (2), whichever is greater.

(c) Reasonable attorney fees and costs.

(6) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that promotes an altered sexual depiction in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity; or

(d) A person participating in a hearing, trial, or other legal proceeding.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

Section 5. Section 836.14, Florida Statutes, is created to read:

836.14 Unlawfully obtaining, possessing, or promoting a

591-02274A-22

20221798c1

349 sexually explicit image.—

350 (1) As used in this section, the term:

351 (a) "Identifiable person" has the same meaning as in s.
352 836.13.

353 (b) "Promote" has the same meaning as in s. 836.13.

354 (c) "Sexually explicit image" means any image depicting
355 nudity as defined in s. 847.001 or a person engaging in sexual
356 conduct as defined in s. 847.001.

357 (2) A person who knowingly and unlawfully obtains a
358 sexually explicit image of an identifiable person with the
359 intent to promote such image commits a felony of the third
360 degree, punishable as provided in s. 775.082, s. 775.083, or s.
361 775.084.

362 (3) A person who willfully possesses with the intent to
363 promote for the purpose of pecuniary or any other type of
364 financial gain a sexually explicit image of an identifiable
365 person without that person's consent commits a felony of the
366 third degree, punishable as provided in s. 775.082, s. 775.083,
367 or s. 775.084.

368 (4) A person who willfully promotes for the purpose of
369 pecuniary or any other financial gain a sexually explicit image
370 of an identifiable person without that person's consent commits
371 a felony of the second degree, punishable as provided in s.
372 775.082, s. 775.083, or s. 775.084.

373 (5) Every act, thing, or transaction prohibited by this
374 section constitutes a separate offense and is punishable as
375 such.

376 (6) An aggrieved person may initiate a civil action against
377 a person who violates this section to obtain all appropriate

591-02274A-22

20221798c1

relief in order to prevent or remedy a violation of this section, including the following:

(a) Injunctive relief.

(b) Monetary damages to include \$10,000 or actual damages incurred as a result of a violation of this section, whichever is greater.

(c) Reasonable attorney fees and costs.

(7) The criminal and civil penalties of this section do not apply to:

(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), of an information service as defined in 47 U.S.C. s. 153, or of a communications service as defined in s. 202.11 which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer or the duties of the law enforcement agency;

(c) A person reporting unlawful activity;

(d) A person participating in a hearing, trial, or other legal proceeding; or

(e) Sexually explicit images involving voluntary exposure in a public or commercial setting.

(8) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted individual resulting from the offense,

591-02274A-22

20221798c1

occurs within this state.

Section 6. Present subsections (7) through (11) and (12) through (20) of section 847.001, Florida Statutes, are redesignated as subsections (8) through (12) and (14) through (22), respectively, new subsections (7) and (13) are added to that section, and subsection (3) and present subsections (8), (16), and (19) of that section are amended, to read:

847.001 Definitions.—As used in this chapter, the term:

(3) "Child sexual abuse material" ~~"Child pornography"~~
means:

(a) Any image depicting a minor engaged in sexual conduct;
or

(b) Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

(7) "Identifiable minor" means a person:

(a) Who was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and

(b) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

(9) ~~(8)~~ "Minor" or "child" means any person, whose identity is known or unknown, younger than under the age of 18 years of age.

(13) "Promote" means to procure, manufacture, issue, sell,

591-02274A-22

20221798c1

436 give, provide, lend, mail, deliver, transfer, transmit,
437 transmute, publish, distribute, circulate, disseminate, present,
438 exhibit, send, post, share, or advertise or to offer or agree to
439 do the same.

440 (18)~~(16)~~ "Sexual conduct" means actual or simulated sexual
441 intercourse, deviate sexual intercourse, sexual bestiality,
442 masturbation, or sadomasochistic abuse; actual or simulated lewd
443 exhibition of the genitals; actual physical contact with a
444 person's clothed or unclothed genitals, pubic area, buttocks,
445 or, if such person is a female, breast with the intent to arouse
446 or gratify the sexual desire of either party; or any act or
447 conduct which constitutes sexual battery or simulates that
448 sexual battery is being or will be committed. A mother's
449 breastfeeding of her baby does not under any circumstance
450 constitute "sexual conduct."

451 (21)~~(19)~~ "Simulated" means the explicit depiction of
452 conduct described in subsection (18) ~~(16)~~ which creates the
453 appearance of such conduct and which exhibits any uncovered
454 portion of the breasts, genitals, or buttocks.

455 Section 7. Subsection (5) of section 847.011, Florida
456 Statutes, is amended to read:

457 847.011 Prohibition of certain acts in connection with
458 obscene, lewd, etc., materials; penalty.—

459 (5)(a)1. A person may not knowingly sell, lend, give away,
460 distribute, transmit, show, or transmute; offer to sell, lend,
461 give away, distribute, transmit, show, or transmute; have in his
462 or her possession, custody, or control with the intent to sell,
463 lend, give away, distribute, transmit, show, or transmute; or
464 advertise in any manner an obscene, child-like sex doll.

591-02274A-22

20221798c1

2.a. Except as provided in sub-subparagraph b., a person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. Except as provided in subparagraph 2., a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c)1. A law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe has violated paragraph (b).

2. Upon proper affidavits being made, a search warrant may be issued to further investigate a violation of paragraph (b), including to search a private dwelling.

Section 8. Subsections (1) through (4) of section 847.0137, Florida Statutes, are amended to read:

847.0137 Transmission of pornography by electronic device or equipment prohibited; penalties.—

(1) As used in this section, the term ~~For purposes of this section:~~

~~(a) "Minor" means any person less than 18 years of age.~~

~~(b)~~ "transmit" means the act of sending and causing to be delivered, including the act of providing access for receiving

591-02274A-22

20221798c1

and causing to be delivered, any image, information, or data
~~from one or more persons or places to one or more other persons~~
~~or places~~ over or through any medium, including the Internet or
an interconnected network, by use of any electronic equipment or
other device.

(2) Notwithstanding ss. 847.012 and 847.0133, any person in
this state who knew or reasonably should have known that he or
she was transmitting child sexual abuse material ~~child~~
~~pornography~~, as defined in s. 847.001, to another person in this
state or in another jurisdiction commits a felony of the third
degree, punishable as provided in s. 775.082, s. 775.083, or s.
775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in
any jurisdiction other than this state who knew or reasonably
should have known that he or she was transmitting child sexual
abuse material ~~child pornography~~, as defined in s. 847.001, to
any person in this state commits a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) This section shall not be construed to prohibit
prosecution of a person in this state or another jurisdiction
for a violation of any law of this state, including a law
providing for greater penalties than prescribed in this section,
for the transmission of child sexual abuse material ~~child~~
~~pornography~~, as defined in s. 847.001, to any person in this
state.

The provisions of this section do not apply to subscription-
based transmissions such as list servers.

Section 9. Paragraphs (c), (d), and (e) of subsection (3)

591-02274A-22

20221798c1

of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number

591-02274A-22

20221798c1

plate removed.

319.33 (1) (a)

3rd

Alter or forge any
certificate of title to a
motor vehicle or mobile
home.

319.33 (1) (c)

3rd

Procure or pass title on
stolen vehicle.

319.33 (4)

3rd

With intent to defraud,
possess, sell, etc., a
blank, forged, or
unlawfully obtained title
or registration.

327.35 (2) (b)

3rd

Felony BUI.

328.05 (2)

3rd

Possess, sell, or
counterfeit fictitious,
stolen, or fraudulent
titles or bills of sale of
vessels.

328.07 (4)

3rd

Manufacture, exchange, or
possess vessel with
counterfeit or wrong ID
number.

591-02274A-22

20221798c1

376.302 (5)

3rd

Fraud related to
reimbursement for cleanup
expenses under the Inland
Protection Trust Fund.

541

379.2431

3rd

(1) (e) 5.

Taking, disturbing,
mutilating, destroying,
causing to be destroyed,
transferring, selling,
offering to sell,
molesting, or harassing
marine turtles, marine
turtle eggs, or marine
turtle nests in violation
of the Marine Turtle
Protection Act.

542

379.2431

3rd

(1) (e) 6.

Possessing any marine
turtle species or
hatchling, or parts
thereof, or the nest of
any marine turtle species
described in the Marine
Turtle Protection Act.

543

379.2431

3rd

(1) (e) 7.

Soliciting to commit or
conspiring to commit a
violation of the Marine
Turtle Protection Act.

591-02274A-22

20221798c1

544

400.9935 (4) (a)
or (b)

3rd

Operating a clinic, or
offering services
requiring licensure,
without a license.

545

400.9935 (4) (e)

3rd

Filing a false license
application or other
required information or
failing to report
information.

546

440.1051 (3)

3rd

False report of workers'
compensation fraud or
retaliation for making
such a report.

547

501.001 (2) (b)

2nd

Tampers with a consumer
product or the container
using materially
false/misleading
information.

548

624.401 (4) (a)

3rd

Transacting insurance
without a certificate of
authority.

549

624.401 (4) (b) 1.

3rd

Transacting insurance
without a certificate of

591-02274A-22

20221798c1

authority; premium
collected less than
\$20,000.

626.902 (1) (a) &
(b)

3rd Representing an
unauthorized insurer.

697.08

3rd Equity skimming.

790.15 (3)

3rd Person directs another to
discharge firearm from a
vehicle.

806.10 (1)

3rd Maliciously injure,
destroy, or interfere with
vehicles or equipment used
in firefighting.

806.10 (2)

3rd Interferes with or
assaults firefighter in
performance of duty.

810.09 (2) (c)

3rd Trespass on property other
than structure or
conveyance armed with
firearm or dangerous
weapon.

812.014 (2) (c) 2.

3rd Grand theft; \$5,000 or

591-02274A-22

20221798c1

more but less than
\$10,000.

557

812.0145 (2) (c)

3rd

Theft from person 65 years
of age or older; \$300 or
more but less than
\$10,000.

558

812.015 (8) (b)

3rd

Retail theft with intent
to sell; conspires with
others.

559

812.081 (2)

3rd

Theft of a trade secret.

560

815.04 (5) (b)

2nd

Computer offense devised
to defraud or obtain
property.

561

817.034 (4) (a) 3.

3rd

Engages in scheme to
defraud (Florida
Communications Fraud Act),
property valued at less
than \$20,000.

562

817.233

3rd

Burning to defraud
insurer.

563

817.234

3rd

(8) (b) & (c)

Unlawful solicitation of
persons involved in motor

591-02274A-22

20221798c1

vehicle accidents.

564

817.234(11)(a)

3rd

Insurance fraud; property
value less than \$20,000.

565

817.236

3rd

Filing a false motor
vehicle insurance
application.

566

817.2361

3rd

Creating, marketing, or
presenting a false or
fraudulent motor vehicle
insurance card.

567

817.413(2)

3rd

Sale of used goods of
\$1,000 or more as new.

568

817.49(2)(b)1.

3rd

Willful making of a false
report of a crime causing
great bodily harm,
permanent disfigurement,
or permanent disability.

569

831.28(2)(a)

3rd

Counterfeiting a payment
instrument with intent to
defraud or possessing a
counterfeit payment
instrument with intent to
defraud.

591-02274A-22

20221798c1

570

831.29

2nd

Possession of instruments
for counterfeiting driver
licenses or identification
cards.

571

836.13 (2)3rd

Person who promotes an
altered sexual depiction
of an identifiable person
without consent.

572

838.021 (3) (b)

3rd

Threatens unlawful harm to
public servant.

573

843.19

2nd

Injure, disable, or kill
police, fire, or SAR
canine or police horse.

574

860.15 (3)

3rd

Overcharging for repairs
and parts.

575

870.01 (2)

3rd

Riot.

576

870.01 (4)

3rd

Inciting a riot.

577

893.13 (1) (a) 2.

3rd

Sell, manufacture, or
deliver cannabis (or other
s. 893.03 (1) (c), (2) (c) 1.,
(2) (c) 2., (2) (c) 3.,

591-02274A-22

20221798c1

(2) (c) 6., (2) (c) 7.,
 (2) (c) 8., (2) (c) 9.,
 (2) (c) 10., (3), or (4)
 drugs).

578

893.13 (1) (d) 2.

2nd

Sell, manufacture, or
 deliver s. 893.03 (1) (c),
 (2) (c) 1., (2) (c) 2.,
 (2) (c) 3., (2) (c) 6.,
 (2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (2) (c) 10., (3),
 or (4) drugs within 1,000
 feet of university.

579

893.13 (1) (f) 2.

2nd

Sell, manufacture, or
 deliver s. 893.03 (1) (c),
 (2) (c) 1., (2) (c) 2.,
 (2) (c) 3., (2) (c) 6.,
 (2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (2) (c) 10., (3),
 or (4) drugs within 1,000
 feet of public housing
 facility.

580

893.13 (4) (c)

3rd

Use or hire of minor;
 deliver to minor other
 controlled substances.

581

893.13 (6) (a)

3rd

Possession of any

591-02274A-22

20221798c1

controlled substance other
than felony possession of
cannabis.

582

893.13 (7) (a) 8.

3rd

Withhold information from
practitioner regarding
previous receipt of or
prescription for a
controlled substance.

583

893.13 (7) (a) 9.

3rd

Obtain or attempt to
obtain controlled
substance by fraud,
forgery,
misrepresentation, etc.

584

893.13 (7) (a) 10.

3rd

Affix false or forged
label to package of
controlled substance.

585

893.13 (7) (a) 11.

3rd

Furnish false or
fraudulent material
information on any
document or record
required by chapter 893.

586

893.13 (8) (a) 1.

3rd

Knowingly assist a
patient, other person, or
owner of an animal in

591-02274A-22

20221798c1

obtaining a controlled
substance through
deceptive, untrue, or
fraudulent representations
in or related to the
practitioner's practice.

587

893.13(8)(a)2.

3rd

Employ a trick or scheme
in the practitioner's
practice to assist a
patient, other person, or
owner of an animal in
obtaining a controlled
substance.

588

893.13(8)(a)3.

3rd

Knowingly write a
prescription for a
controlled substance for a
fictitious person.

589

893.13(8)(a)4.

3rd

Write a prescription for a
controlled substance for a
patient, other person, or
an animal if the sole
purpose of writing the
prescription is a monetary
benefit for the
practitioner.

590

591-02274A-22

20221798c1

918.13 (1) (a)

3rd

Alter, destroy, or conceal
investigation evidence.

591

944.47

3rd

Introduce contraband to
correctional facility.

(1) (a) 1. & 2.

592

944.47 (1) (c)

2nd

Possess contraband while
upon the grounds of a
correctional institution.

593

985.721

3rd

Escapes from a juvenile
facility (secure detention
or residential commitment
facility).

594

(d) LEVEL 4

595

596

Florida

Felony

Statute

Degree

Description

597

316.1935 (3) (a)

2nd

Driving at high speed
or with wanton
disregard for safety
while fleeing or
attempting to elude law
enforcement officer who
is in a patrol vehicle
with siren and lights
activated.

591-02274A-22

20221798c1

598

499.0051(1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

599

499.0051(5)

2nd

Knowing sale or
delivery, or possession
with intent to sell,
contraband prescription
drugs.

600

517.07(1)

3rd

Failure to register
securities.

601

517.12(1)

3rd

Failure of dealer,
associated person, or
issuer of securities to
register.

602

784.07(2)(b)

3rd

Battery of law
enforcement officer,
firefighter, etc.

603

784.074(1)(c)

3rd

Battery of sexually
violent predators
facility staff.

604

591-02274A-22

20221798c1

784.075

3rd

Battery on detention or
commitment facility
staff.

784.078

3rd

Battery of facility
employee by throwing,
tossing, or expelling
certain fluids or
materials.

784.08 (2) (c)

3rd

Battery on a person 65
years of age or older.

784.081 (3)

3rd

Battery on specified
official or employee.

784.082 (3)

3rd

Battery by detained
person on visitor or
other detainee.

784.083 (3)

3rd

Battery on code
inspector.

784.085

3rd

Battery of child by
throwing, tossing,
projecting, or
expelling certain
fluids or materials.

591-02274A-22

20221798c1

787.03 (1)

3rd

Interference with
custody; wrongly takes
minor from appointed
guardian.

787.04 (2)

3rd

Take, entice, or remove
child beyond state
limits with criminal
intent pending custody
proceedings.

787.04 (3)

3rd

Carrying child beyond
state lines with
criminal intent to
avoid producing child
at custody hearing or
delivering to
designated person.

787.07

3rd

Human smuggling.

790.115 (1)

3rd

Exhibiting firearm or
weapon within 1,000
feet of a school.

790.115 (2) (b)

3rd

Possessing electric
weapon or device,
destructive device, or
other weapon on school

591-02274A-22

20221798c1

property.

617

790.115 (2) (c)

3rd

Possessing firearm on
school property.

618

800.04 (7) (c)

3rd

Lewd or lascivious
exhibition; offender
less than 18 years.

619

806.135

2nd

Destroying or
demolishing a memorial
or historic property.

620

810.02 (4) (a)

3rd

Burglary, or attempted
burglary, of an
unoccupied structure;
unarmed; no assault or
battery.

621

810.02 (4) (b)

3rd

Burglary, or attempted
burglary, of an
unoccupied conveyance;
unarmed; no assault or
battery.

622

810.06

3rd

Burglary; possession of
tools.

623

810.08 (2) (c)

3rd

Trespass on property,

591-02274A-22

20221798c1

armed with firearm or
dangerous weapon.

624

812.014 (2) (c) 3.

3rd

Grand theft, 3rd degree
\$10,000 or more but
less than \$20,000.

625

812.014
(2) (c) 4.-10.

3rd

Grand theft, 3rd
degree; specified
items.

626

812.0195 (2)

3rd

Dealing in stolen
property by use of the
Internet; property
stolen \$300 or more.

627

817.505 (4) (a)

3rd

Patient brokering.

628

817.563 (1)

3rd

Sell or deliver
substance other than
controlled substance
agreed upon, excluding
s. 893.03 (5) drugs.

629

817.568 (2) (a)

3rd

Fraudulent use of
personal identification
information.

630

817.625 (2) (a)

3rd

Fraudulent use of

591-02274A-22

20221798c1

scanning device,
skimming device, or
reencoder.

631

817.625 (2) (c)

3rd

Possess, sell, or
deliver skimming
device.

632

828.125 (1)

2nd

Kill, maim, or cause
great bodily harm or
permanent breeding
disability to any
registered horse or
cattle.

633

836.14 (2)3rd

Person who obtains a
sexually explicit image
of an identifiable
person with certain
intent.

634

836.14 (3)3rd

Person who possesses
with intent to promote
for a certain purpose a
sexually explicit image
of an identifiable
person without consent.

635

837.02 (1)

3rd

Perjury in official

591-02274A-22

20221798c1

proceedings.

636

837.021 (1)

3rd

Make contradictory
statements in official
proceedings.

637

838.022

3rd

Official misconduct.

638

839.13 (2) (a)

3rd

Falsifying records of
an individual in the
care and custody of a
state agency.

639

839.13 (2) (c)

3rd

Falsifying records of
the Department of
Children and Families.

640

843.021

3rd

Possession of a
concealed handcuff key
by a person in custody.

641

843.025

3rd

Deprive law
enforcement,
correctional, or
correctional probation
officer of means of
protection or
communication.

642

591-02274A-22

20221798c1

843.15 (1) (a)

3rd

Failure to appear while
on bail for felony
(bond estreature or
bond jumping).

847.0135 (5) (c)

3rd

Lewd or lascivious
exhibition using
computer; offender less
than 18 years.

870.01 (3)

2nd

Aggravated rioting.

870.01 (5)

2nd

Aggravated inciting a
riot.

874.05 (1) (a)

3rd

Encouraging or
recruiting another to
join a criminal gang.

893.13 (2) (a) 1.

2nd

Purchase of cocaine (or
other s. 893.03 (1) (a),
(b), or (d), (2) (a),
(2) (b), or (2) (c) 5.
drugs).

914.14 (2)

3rd

Witnesses accepting
bribes.

914.22 (1)

3rd

Force, threaten, etc.,

591-02274A-22

20221798c1

witness, victim, or
informant.

914.23 (2)

3rd

Retaliation against a
witness, victim, or
informant, no bodily
injury.

916.1085

3rd

Introduction of
specified contraband
into certain DCF
facilities.

(2) (c) 1.

918.12

3rd

Tampering with jurors.

934.215

3rd

Use of two-way
communications device
to facilitate
commission of a crime.

944.47 (1) (a) 6.

3rd

Introduction of
contraband (cellular
telephone or other
portable communication
device) into
correctional
institution.

951.22 (1) (h) ,

3rd

Intoxicating drug,

591-02274A-22

20221798c1

(j) & (k)

instrumentality or
other device to aid
escape, or cellular
telephone or other
portable communication
device introduced into
county detention
facility.

(e) LEVEL 5

Florida
Statute

Felony
Degree

Description

316.027(2) (a)

3rd

Accidents involving
personal injuries other
than serious bodily
injury, failure to stop;
leaving scene.

316.1935(4) (a)

2nd

Aggravated fleeing or
eluding.

316.80(2)

2nd

Unlawful conveyance of
fuel; obtaining fuel
fraudulently.

322.34(6)

3rd

Careless operation of
motor vehicle with

591-02274A-22

20221798c1

suspended license,
resulting in death or
serious bodily injury.

663

327.30 (5)

3rd

Vessel accidents
involving personal
injury; leaving scene.

664

379.365 (2) (c) 1.

3rd

Violation of rules
relating to: willful
molestation of stone
crab traps, lines, or
buoys; illegal
bartering, trading, or
sale, conspiring or
aiding in such barter,
trade, or sale, or
supplying, agreeing to
supply, aiding in
supplying, or giving
away stone crab trap
tags or certificates;
making, altering,
forging, counterfeiting,
or reproducing stone
crab trap tags;
possession of forged,
counterfeit, or
imitation stone crab

591-02274A-22

20221798c1

trap tags; and engaging
in the commercial
harvest of stone crabs
while license is
suspended or revoked.

665

379.367(4)

3rd

Willful molestation of a
commercial harvester's
spiny lobster trap,
line, or buoy.

666

379.407(5)(b)3.

3rd

Possession of 100 or
more undersized spiny
lobsters.

667

381.0041(11)(b)

3rd

Donate blood, plasma, or
organs knowing HIV
positive.

668

440.10(1)(g)

2nd

Failure to obtain
workers' compensation
coverage.

669

440.105(5)

2nd

Unlawful solicitation
for the purpose of
making workers'
compensation claims.

670

440.381(2)

3rd

Submission of false,

591-02274A-22

20221798c1

misleading, or
incomplete information
with the purpose of
avoiding or reducing
workers' compensation
premiums.

671

624.401(4)(b)2.

2nd

Transacting insurance
without a certificate or
authority; premium
collected \$20,000 or
more but less than
\$100,000.

672

626.902(1)(c)

2nd

Representing an
unauthorized insurer;
repeat offender.

673

790.01(2)

3rd

Carrying a concealed
firearm.

674

790.162

2nd

Threat to throw or
discharge destructive
device.

675

790.163(1)

2nd

False report of bomb,
explosive, weapon of
mass destruction, or use
of firearms in violent

591-02274A-22

20221798c1

manner.

676

790.221 (1)

2nd

Possession of short-barreled shotgun or machine gun.

677

790.23

2nd

Felons in possession of firearms, ammunition, or electronic weapons or devices.

678

796.05 (1)

2nd

Live on earnings of a prostitute; 1st offense.

679

800.04 (6) (c)

3rd

Lewd or lascivious conduct; offender less than 18 years of age.

680

800.04 (7) (b)

2nd

Lewd or lascivious exhibition; offender 18 years of age or older.

681

806.111 (1)

3rd

Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

682

812.0145 (2) (b)

2nd

Theft from person 65 years of age or older;

591-02274A-22

20221798c1

\$10,000 or more but less
than \$50,000.

683

812.015

3rd

Retail theft; property
stolen is valued at \$750
or more and one or more
specified acts.

(8) (a) & (c) - (e)

684

812.019(1)

2nd

Stolen property; dealing
in or trafficking in.

685

812.081(3)

2nd

Trafficking in trade
secrets.

686

812.131(2) (b)

3rd

Robbery by sudden
snatching.

687

812.16(2)

3rd

Owning, operating, or
conducting a chop shop.

688

817.034(4) (a) 2.

2nd

Communications fraud,
value \$20,000 to
\$50,000.

689

817.234(11) (b)

2nd

Insurance fraud;
property value \$20,000
or more but less than
\$100,000.

690

591-02274A-22

20221798c1

817.2341(1),

3rd

Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

(2) (a) & (3) (a)

691

817.568(2) (b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

692

817.611(2) (a)

2nd

Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

693

817.625(2) (b)

2nd

Second or subsequent fraudulent use of scanning device,

591-02274A-22

20221798c1

skimming device, or
reencoder.

694

825.1025(4)

3rd

Lewd or lascivious
exhibition in the
presence of an elderly
person or disabled
adult.

695

827.071(4)

2nd

Possess with intent to
promote any photographic
material, motion
picture, etc., which
includes child sexual
abuse material ~~sexual~~
~~conduct by a child~~.

696

827.071(5)

3rd

Possess, control, or
intentionally view any
photographic material,
motion picture, etc.,
which includes child
sexual abuse material
~~sexual conduct by a~~
~~child~~.

697

828.12(2)

3rd

Tortures any animal with
intent to inflict
intense pain, serious

591-02274A-22

20221798c1

physical injury, or
death.

836.14 (4)2nd

Person who promotes for
a certain purpose a
sexually explicit image
of an identifiable
person without consent.

839.13 (2) (b)

2nd

Falsifying records of an
individual in the care
and custody of a state
agency involving great
bodily harm or death.

843.01

3rd

Resist officer with
violence to person;
resist arrest with
violence.

847.0135 (5) (b)

2nd

Lewd or lascivious
exhibition using
computer; offender 18
years or older.

847.0137
(2) & (3)

3rd

Transmission of
pornography by
electronic device or
equipment.

591-02274A-22

20221798c1

703

847.0138
(2) & (3)

3rd

Transmission of material
harmful to minors to a
minor by electronic
device or equipment.

704

874.05 (1) (b)

2nd

Encouraging or
recruiting another to
join a criminal gang;
second or subsequent
offense.

705

874.05 (2) (a)

2nd

Encouraging or
recruiting person under
13 years of age to join
a criminal gang.

706

893.13 (1) (a) 1.

2nd

Sell, manufacture, or
deliver cocaine (or
other s. 893.03 (1) (a),
(1) (b), (1) (d), (2) (a),
(2) (b), or (2) (c) 5.
drugs).

707

893.13 (1) (c) 2.

2nd

Sell, manufacture, or
deliver cannabis (or
other s. 893.03 (1) (c),
(2) (c) 1., (2) (c) 2.,
(2) (c) 3., (2) (c) 6.,

591-02274A-22

20221798c1

(2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (2) (c) 10.,
 (3), or (4) drugs)
 within 1,000 feet of a
 child care facility,
 school, or state,
 county, or municipal
 park or publicly owned
 recreational facility or
 community center.

708

893.13 (1) (d) 1.

1st

Sell, manufacture, or
 deliver cocaine (or
 other s. 893.03 (1) (a),
 (1) (b), (1) (d), (2) (a),
 (2) (b), or (2) (c) 5.
 drugs) within 1,000 feet
 of university.

709

893.13 (1) (e) 2.

2nd

Sell, manufacture, or
 deliver cannabis or
 other drug prohibited
 under s. 893.03 (1) (c),
 (2) (c) 1., (2) (c) 2.,
 (2) (c) 3., (2) (c) 6.,
 (2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (2) (c) 10.,
 (3), or (4) within 1,000
 feet of property used

591-02274A-22

20221798c1

for religious services
or a specified business
site.

710

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),
(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)5. drugs) within
1,000 feet of public
housing facility.

711

893.13(4)(b)

2nd

Use or hire of minor;
deliver to minor other
controlled substance.

712

893.1351(1)

3rd

Ownership, lease, or
rental for trafficking
in or manufacturing of
controlled substance.

713

714 Section 10. Paragraph (e) of subsection (3) and subsection
715 (10) of section 960.03, Florida Statutes, are amended to read:

716 960.03 Definitions; ss. 960.01-960.28.—As used in ss.

717 960.01-960.28, unless the context otherwise requires, the term:

718 (3) "Crime" means:

719 (e) A violation of s. 827.071, s. 847.0135, s. 847.0137, or
720 s. 847.0138, related to online sexual exploitation and child

591-02274A-22

20221798c1

sexual abuse material ~~child pornography~~.

(10) "Identified victim of child sexual abuse material ~~child pornography~~" means any person who, while under the age of 18, is depicted in any image or movie of child sexual abuse material ~~child pornography~~ and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children's Child Victim Identification Program.

Section 11. Paragraph (j) of subsection (1) of section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

(1) DEFINITIONS.—As used in this section, the term:

(j) "Qualified production" means a production in this state meeting the requirements of this section. The term does not include a production:

1. In which, for the first 2 years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Florida driver license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state; or

2. That contains obscene content as defined in s. 847.001 ~~s. 847.001(10)~~.

Section 12. Subsection (1) of section 847.0141, Florida

591-02274A-22

20221798c1

Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001 ~~s. 847.001(9)~~, and is harmful to minors, as defined in s. 847.001 ~~s. 847.001(6)~~.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, as defined in s. 847.001 ~~s. 847.001(9)~~, and is harmful to minors, as defined in s. 847.001 ~~s. 847.001(6)~~. A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

Section 13. Subsection (3) of section 39.0138, Florida Statutes, is amended to read:

39.0138 Criminal history and other records checks; limit on placement of a child.—

(3) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

591-02274A-22

20221798c1

(a) Child abuse, abandonment, or neglect;

(b) Domestic violence;

(c) Child sexual abuse material ~~Child pornography~~ or other felony in which a child was a victim of the offense; or

(d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery, or resisting arrest with violence.

Section 14. Subsection (3) of section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses and human trafficking.—

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in s. 787.06(3)(a)1., (c)1., or (e)1., in s. 787.06(3)(b), (d), (f), or (g), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child sexual abuse material ~~child pornography~~ as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

Section 15. Section 92.561, Florida Statutes, is amended to read:

92.561 Prohibition on reproduction of child sexual abuse material ~~child pornography~~.—

(1) In a criminal proceeding, any property or material that portrays sexual performance by a child as defined in s. 827.071, or constitutes child sexual abuse material ~~child pornography~~ as defined in s. 847.001, must remain secured or locked in the

591-02274A-22

20221798c1

care, custody, and control of a law enforcement agency, the state attorney, or the court.

(2) Notwithstanding any law or rule of court, a court shall deny, in a criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays sexual performance by a child or constitutes child sexual abuse material ~~child pornography~~ so long as the state attorney makes the property or material reasonably available to the defendant.

(3) For purposes of this section, property or material is deemed to be reasonably available to the defendant if the state attorney provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays sexual performance by a child or constitutes child sexual abuse material ~~child pornography~~ by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during the discovery process or at a court proceeding.

Section 16. Paragraph (c) of subsection (4) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(4)

(c) Disqualification from employment under this chapter may not be removed from, and an exemption may not be granted to, any

591-02274A-22

20221798c1

current or prospective child care personnel, as defined in s. 402.302(3), and such a person is disqualified from employment as child care personnel, regardless of any previous exemptions from disqualification, if the person has been registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has been arrested for and is awaiting final disposition of, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or a similar law of another jurisdiction:

1. A felony offense prohibited under any of the following statutes:

- a. Chapter 741, relating to domestic violence.
- b. Section 782.04, relating to murder.
- c. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- d. Section 784.021, relating to aggravated assault.
- e. Section 784.045, relating to aggravated battery.
- f. Section 787.01, relating to kidnapping.
- g. Section 787.025, relating to luring or enticing a child.
- h. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

591-02274A-22

20221798c1

i. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

j. Section 794.011, relating to sexual battery.

k. Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

l. Section 794.05, relating to unlawful sexual activity with certain minors.

m. Section 794.08, relating to female genital mutilation.

n. Section 806.01, relating to arson.

o. Section 826.04, relating to incest.

p. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

q. Section 827.04, relating to contributing to the delinquency or dependency of a child.

r. Section 827.071, relating to sexual performance by a child.

s. Chapter 847, relating to child sexual abuse material ~~child pornography~~.

t. Chapter 893, relating to a drug abuse prevention and control offense, if that offense was committed in the preceding 5 years.

u. Section 985.701, relating to sexual misconduct in juvenile justice programs.

2. A misdemeanor offense prohibited under any of the following statutes:

591-02274A-22

20221798c1

895 a. Section 784.03, relating to battery, if the victim of
896 the offense was a minor.

897 b. Section 787.025, relating to luring or enticing a child.

898 c. Chapter 847, relating to child sexual abuse material
899 ~~child pornography~~.

900 3. A criminal act committed in another state or under
901 federal law which, if committed in this state, constitutes an
902 offense prohibited under any statute listed in subparagraph 1.
903 or subparagraph 2.

904 Section 17. Paragraph (z) of subsection (5) of section
905 456.074, Florida Statutes, is amended to read:

906 456.074 Certain health care practitioners; immediate
907 suspension of license.—

908 (5) The department shall issue an emergency order
909 suspending the license of any health care practitioner who is
910 arrested for committing or attempting, soliciting, or conspiring
911 to commit any act that would constitute a violation of any of
912 the following criminal offenses in this state or similar
913 offenses in another jurisdiction:

914 (z) Section 847.0137, relating to the transmission of child
915 sexual abuse material ~~child pornography~~ by electronic device or
916 equipment.

917 Section 18. Section 847.002, Florida Statutes, is amended
918 to read:

919 847.002 Child sexual abuse material ~~Child pornography~~
920 prosecutions.—

921 (1) Any law enforcement officer who, pursuant to a criminal
922 investigation, recovers images or movies of child sexual abuse
923 material ~~child pornography~~ shall:

591-02274A-22

20221798c1

(a) Provide such images or movies to the law enforcement agency representative assigned to the Child Victim Identification Program at the National Center for Missing and Exploited Children, as required by the center's guidelines.

(b) Request the law enforcement agency contact information from the Child Victim Identification Program for any images or movies recovered which contain an identified victim of child sexual abuse material ~~child pornography~~ as defined in s. 960.03.

(c) Provide case information to the Child Victim Identification Program, as required by the National Center for Missing and Exploited Children guidelines, in any case where the law enforcement officer identifies a previously unidentified victim of child sexual abuse material ~~child pornography~~.

(2) Any law enforcement officer submitting a case for prosecution which involves the production, promotion, or possession of child sexual abuse material ~~child pornography~~ shall submit to the designated prosecutor the law enforcement agency contact information provided by the Child Victim Identification Program at the National Center for Missing and Exploited Children, for any images or movies involved in the case which contain the depiction of an identified victim of child sexual abuse material ~~child pornography~~ as defined in s. 960.03.

(3) In every filed case involving an identified victim of child sexual abuse material ~~child pornography~~, as defined in s. 960.03, the prosecuting agency shall enter the following information into the Victims in Child Sexual Abuse Material ~~Child Pornography~~ Tracking Repeat Exploitation database maintained by the Office of the Attorney General:

591-02274A-22

20221798c1

- 953 (a) The case number and agency file number.
954 (b) The named defendant.
955 (c) The circuit court division and county.
956 (d) Current court dates and the status of the case.
957 (e) Contact information for the prosecutor assigned.
958 (f) Verification that the prosecutor is or is not in
959 possession of a victim impact statement and will use the
960 statement in sentencing.

961 Section 19. Subsections (1) and (4) of section 847.01357,
962 Florida Statutes, are amended to read:

963 847.01357 Exploited children's civil remedy.—

964 (1) Any person who, while under the age of 18, was a victim
965 of a sexual abuse crime listed in chapter 794, chapter 800,
966 chapter 827, or chapter 847, where any portion of such abuse was
967 used in the production of child sexual abuse material ~~child~~
968 ~~pornography~~, and who suffers personal or psychological injury as
969 a result of the production, promotion, or possession of such
970 images or movies, may bring an action in an appropriate state
971 court against the producer, promoter, or possessor of such
972 images or movies, regardless of whether the victim is now an
973 adult. In any action brought under this section, a prevailing
974 plaintiff shall recover the actual damages such person sustained
975 and the cost of the suit, including reasonable attorney's fees.
976 Any victim who is awarded damages under this section shall be
977 deemed to have sustained damages of at least \$150,000.

978 (4) It is not a defense to a civil cause of action under
979 this section that the respondent did not know the victim or
980 commit the abuse depicted in any image of child sexual abuse
981 material ~~child pornography~~.

591-02274A-22

20221798c1

Section 20. Section 847.0139, Florida Statutes, is amended to read:

847.0139 Immunity from civil liability for reporting child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or any image, information, or data harmful to minors to a minor in this state.—Any person who reports to a law enforcement officer what the person reasonably believes to be child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or any image, information, or data that is harmful to minors to a minor in this state may not be held civilly liable for such reporting. For purposes of this section, such reporting may include furnishing the law enforcement officer with any image, information, or data that the person reasonably believes to be evidence of child sexual abuse material ~~child pornography~~, transmission of child sexual abuse material ~~child pornography~~, or an image, information, or data that is harmful to minors to a minor in this state.

Section 21. Paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term “qualifying offense” means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2) (b)

591-02274A-22

20221798c1

or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child sexual abuse material ~~child pornography~~ under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that

591-02274A-22

20221798c1

is either a first degree felony or second degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

Section 22. Section 960.197, Florida Statutes, is amended to read:

960.197 Assistance to victims of online sexual exploitation and child sexual abuse material ~~child pornography~~.

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award compensation for counseling and other mental health services to treat psychological injury or trauma to:

(a) A child younger than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation under any provision of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, and who does not otherwise sustain a personal injury or death; or

(b) Any person who, while younger than age 18, was depicted in any image or movie, regardless of length, of child sexual abuse material ~~child pornography~~ as defined in s. 847.001, who

591-02274A-22

20221798c1

1069 has been identified by a law enforcement agency or the National
1070 Center for Missing and Exploited Children as an identified
1071 victim of child sexual abuse material ~~child pornography~~, who
1072 suffers psychiatric or psychological injury as a direct result
1073 of the crime, and who does not otherwise sustain a personal
1074 injury or death.

1075 (2) Compensation under this section is not contingent upon
1076 pursuit of a criminal investigation or prosecution.

1077 Section 23. This act shall take effect October 1, 2022.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1798

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Sexually Explicit Material

DATE: February 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Pre-meeting
3. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1798 creates s. 836.13, F.S., to provide criminal and civil penalties for persons who promote certain altered sexual depictions. Colloquially known as “deep fakes,” these images often depict individuals engaging in sexual behavior that they did not engage in.

Specifically, this bill provides that a person commits a third degree felony when he or she willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction.

The bill also creates s. 836.14, F.S., to provide criminal and civil penalties relating to the unlawful obtaining, possessing, or promoting of sexually explicit images. A person commits a third degree felony when he or she:

- Knowingly and unlawfully obtains a sexually explicit image of an identifiable person with intent to promote such image.
- Willfully possesses with the intent to promote for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person’s consent.

A person commits a second degree felony when he or she willfully promotes for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person’s consent.

Additionally, the felony offenses created in this bill are ranked in the offense severity ranking chart of the Criminal Punishment Code.

The bill, throughout the Florida Statutes, replaces the term “child pornography,” with “child sexual abuse material.” The bill expands this term to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

The bill further amends s. 827.071, F.S., to replace the phrase “any sexual conduct by a child,” with the term “child sexual abuse material.” The term “child sexual abuse material,” includes images depicting any sexual conduct by a child.

The bill amends s. 775.0847, F.S., to replace the term “movie” with “motion picture, film, video, or computer-generated motion picture, film, or video,” for purposes of enhancing specified offenses relating to child sexual abuse material or obscenity.

The bill increases the minimum monetary damages from \$5,000 to \$10,000 that a victim of sexual cyberharassment may receive as a result of a civil action.

The bill provides that a law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe possesses a child-like sex doll.

Additionally, the bill provides conforming cross-references.

The bill may have a positive indeterminate fiscal impact (unquantifiable increase in prison beds and jail beds) on the Department of Corrections and local jails. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

II. Present Situation:

With technology advancing at a rapid rate, states and the federal government are attempting to craft laws to address issues arising as a result of such technology. Many of these issues relate to the creation or dissemination of sexually explicit material including, nonconsensual pornography of adults, sexually explicit deep fake images of adults, and morphed child pornography.

Deep Fakes

Deep fakes are realistic images or videos that are created using artificial intelligence (AI) and often depict a real person saying something they did not say, or engaging in a behavior they did not engage in. The use of AI to generate a deep fake image is causing concern because the results are increasingly realistic, rapidly created, and inexpensively made. Software to create such images is often free and publicly available.¹

¹ In Focus, Congressional Research Service, *Deep Fakes and National Security*, June 8, 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF11333> (last visited February 6, 2022).

While there may be beneficial uses, deep fake technology may also pose a harm to individuals. Deep fakes may be used to spread false information, or used to embarrass, humiliate, exploit, or sabotage others.²

Legislation in Other States

Several states provide criminal or civil liability for creating or distributing deep fake images. The states that have enacted laws relating to deep fake images include: Virginia,³ Hawaii,⁴ California,⁵ and Texas.⁶

Currently, no states completely ban the creation or distribution of all deep fakes. A complete ban of such images would likely run afoul of constitutional protections under the First Amendment. However, certain categories of speech, including defamation, fraud, true threats, and the imminent-and likely incitement of violence, do not receive protections under the First Amendment.⁷ Some deep fakes will likely fall into one of those categories and therefore may be regulated.⁸

The potential for harm stemming from deep fake images is often explored in the context of nonconsensual deep fake pornography. “The core issue of nonconsensual pornography is consent, and deep fake pornography adds an additional layer because the individual depicted did not actually engage in the sexual behavior [he or she] is depicted as doing.”⁹

Nonconsensual Pornography

Many states, including Florida, ban nonconsensual pornography, otherwise known as “revenge porn.” Such bans have been consistently upheld by the courts.¹⁰ The courts have found a compelling state interest in protecting individuals from the nonconsensual dissemination of private sexual images. “Those who are unwillingly exposed to their friends, family, bosses, co-workers, teachers, fellow students, or random strangers on the internet are often deeply and permanently scarred by the experience.”¹¹

Section 784.049, F.S., provides that sexual cyberharassment means to publish to an Internet website or disseminate through electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person

² California Law Review, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, Bobby Chesney and Danielle Citron, 2019 Vol. 107:1753, p. 1771-74, (on file with Senate Criminal Justice Committee).

³ Section 18.2-386.2., V.A.C.

⁴ Section 711-1110.9., H.R.S.

⁵ Section 1708.86., C.C.C.

⁶ Section 255.004, V.T.C.A.

⁷ *United States v. Alvarez*, 567 U.S. 709 (2012).

⁸ California Law Review, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, Bobby Chesney and Danielle Citron, 2019 Vol. 107:1753, p. 1791, (on file with Senate Criminal Justice Committee).

⁹ Northwestern University Law Review, *Deepfake Privacy: Attitudes and Regulation*, Mathew B. Kugler and Carly Pace, 2021 Vol 116:611, p. 624-25, (on file with Senate Criminal Justice Committee).

¹⁰ See *Minnesota v. Casillas*, 952 N.W. 2d 629, 642 (Minnesota 2020); *Vermont v. VanBuren*, 210 Vt. 293 (Vermont 2019); *Illinois v. Austin*, 2019 IL 123910, (Illinois 2019).

¹¹ *Minnesota v. Casillas*, 952 N.W. 2d 629, 642 (Minnesota 2020).

without the depicted person's consent, contrary to the depicted person's reasonable expectation that the image would remain private, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

It is a first degree misdemeanor¹² to willfully and maliciously sexually cyberharass another person. A second or subsequent violation is a third degree felony.¹³ In addition to criminal penalties, an aggrieved person may initiate a civil action to obtain injunctive relief, a minimum of \$5,000 in monetary damages, and reasonable attorney fees and costs.¹⁴

There is currently no state law prohibiting the unlawful procuring, or possession of a sexually explicit image with the intent of selling or disseminating such image. Such crimes in Florida may only be charged under current theft¹⁵ laws if applicable.

Child Pornography

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,¹⁶ the Supreme Court of the United States recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was "unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work."¹⁷

The use of AI has also been used to create child pornography, sometimes referred to as "morphing." The Federal Government prohibits such images, however, the Supreme Court of the United States has found that the child or minor depicted in the image must be a real minor for such bans to pass constitutional muster.¹⁸ Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

Child Pornography Prevention Action of 1996

In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),¹⁹ which created a definition of "child pornography." This criminalized, for the first time, acts relating to

¹² A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

¹³ Section 784.049(3), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ Section 784.049(5), F.S.

¹⁵ See ch. 812, F.S.

¹⁶ *New York v. Ferber*, 458 U.S. 747 (1982).

¹⁷ *Id.* at 763.

¹⁸ See *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

¹⁹ Pub. L. No. 104-208, s. 121.

morphed child pornography. Under the CPPA, “child pornography” was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,²⁰ where:
- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., *virtual child pornography – created without using an actual child*);
 - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor²¹ is engaging in sexually explicit conduct (i.e., *morphed child pornography*); or
 - (D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.²²

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,²³ a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting a child or what appears to be a child, engaging in sexually explicit conduct (i.e., virtual child pornography).²⁴

The Court held that the “speech” criminalized in the challenged provision of the CPPA violated the First Amendment because it extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children.²⁵ The Court decided that by prohibiting child pornography that did not depict an actual child, section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.²⁶

The *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children. . . .”²⁷ Courts have taken this dictum to suggest that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.²⁸

²⁰ The term “sexually explicit conduct” was defined as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. s. 2256(2) (1996 ed.).

²¹ The term “identifiable minor” was defined as a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and: who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction. The term was not be construed to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2256(9) (1996 ed.).

²² 18 U.S.C. s. 2256(8) (1996 ed.).

²³ 535 U.S. 234 (2002).

²⁴ 18 U.S.C. s. 2256(8) (1996 ed.).

²⁵ *Ashcroft*, 535 U.S. at 256.

²⁶ *Id.*

²⁷ *Id.* at 242.

²⁸ *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act)

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.²⁹ The Protect Act, in part, narrowed the definition of “virtual” child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.³⁰

Notably, the definition of “morphed” child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

Case Law since the Passage of the Protect Act

To date, the federal statutes relating to morphed child pornography have been upheld.³¹ In *United States v. Bach*,³² the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.³³ The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of [the child entertainer] sitting in the tree.”³⁴

The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography “implicate the interests of a real child,” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.³⁵ The court noted that there may be instances when the “application of s. 2256(8)(C) violates the First Amendment, this is not such a case. This image involves the type of harm which can constitutionally be prosecuted under [*Ashcroft*] and *Ferber*.”³⁶

In *United States v. Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.³⁷ The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.³⁸ The court noted that the image at issue was different from the one in *Bach* in that “no minor was sexually abused.”³⁹ However, the court held that because such images falsely

²⁹ Pub. L. No. 108-21.

³⁰ 18 U.S.C. s. 2256(8)(B).

³¹ See *United States v. Ramos*, 685 F. 3d 120, 134 (2d Cir. 2012), cert. denied, 133 S.Ct. 567 (2012); see also *Doe v. Boland*, 630 F. 3d 491, 497 (6th Cir. 2011).

³² *United States v. Bach*, 400 F. 3d 622 (8th Cir. 2005).

³³ *Id.* at 625.

³⁴ *Id.*

³⁵ *Id.* at 632.

³⁶ *Id.* See also *United States v. Hotaling*, 634 F. 3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment”).

³⁷ 759 F. 3d 891 (8th Cir. 2014).

³⁸ *Id.*

³⁹ *Id.* at 895.

portray identifiable children engaging in sexual activity, such images implicate the government's compelling interest in protecting minors. Using this reasoning, the court held that the definition of morphed child pornography was constitutional.⁴⁰

Florida Child Pornography Laws

Child pornography is defined, as *any* image depicting a minor⁴¹ engaged in sexual conduct.⁴²

⁴³Florida law currently contains a variety of statutes that prohibit acts relating to child pornography. Currently, these statutes are found in two different chapters, ch. 827, F.S., relating to the abuse of children, and ch. 847, F.S., relating to obscenity.

In recent years, individuals have started using AI to create child pornography, e.g., images depicting sexually explicit conduct in which an actual child's head has been superimposed onto an adult's body.⁴⁴ Florida's child pornography laws do not include morphed pornography.

In 2010, Florida's Second DCA held that images that depicted the heads and faces of two children, ages 11 and 12, which were cut and pasted onto images of a 19 year old woman lewdly exhibiting her genitals did not constitute child pornography.⁴⁵ The court closely examined the definition of "sexual conduct," and determined that it requires images to include actual lewd exhibition of the genitals *by a child*.⁴⁶

The court also noted that the images depicted *simulated* lewd exhibition of the genitals by a child. The state argued that s. 827.071(5), F.S., proscribed such images because they were photographs or representations "which ... *in part* ... include ... sexual conduct by a child."⁴⁷ The court disagreed and found that the Legislature specifically excluded *simulated* lewd exhibition from the definition of "sexual conduct." Specifically, the court stated, "[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. In fact, child pornography has been defined in the federal statutes to specifically include composite images. . . ."⁴⁸

⁴⁰ *Id.* at 896.

⁴¹ Section 847.001(8), F.S., provides that "minor" means any person under the age of 18 years.

⁴² "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." Section 847.001(16), F.S.

⁴³ Section 847.001(3), F.S.

⁴⁴ *Computer Generated Child Pornography: A Legal Alternative?* Seattle University Law Review, Vol. 22:643, 1998, available at <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1585&context=sulr> (last visited February 6, 2022).

⁴⁵ *Stelmack v. State*, 58 So. 3d 874 (Fla. 2d DCA 2010).

⁴⁶ *Id.* at 877

⁴⁷ *Id.* (emphasis in original).

⁴⁸ *Id.* at 876.

Section 827.071, F.S., specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. It is a second degree felony⁴⁹ for a person:

- Knowing the character and content thereof, to employ, authorize, or induce a child to engage in a sexual performance.⁵⁰
- Who is a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.⁵¹
- Knowing the character and content, to produce, direct, or promote⁵² any performance which includes sexual conduct by a child.⁵³
- To possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.⁵⁴

It is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation, which, in whole or in part, he or she knows to include any sexual conduct by a child.⁵⁵

Section 847.0137, F.S., specifies that any person who knew or reasonably should have known that he or she was transmitting^{56, 57} child pornography to another person commits a third degree felony.

Child Sexual Abuse Material

There has been a recent push to replace the term “child pornography” with “child sexual abuse material.” The Florida Department of Law Enforcement is one such entity that has requested this

⁴⁹ A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵⁰ Section 827.071(1)(c), F.S., provides “performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

⁵¹ Section 827.071(2), F.S.

⁵² Section 827.071(1)(d), F.S., provides “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.

⁵³ Section 827.071(3), F.S.

⁵⁴ Possession of three or more copies of such photographs, etc., is prima facie evidence of intent to promote.

⁵⁵ The statute also specifies that the possession, control, or intentional viewing of each such photograph, etc., is a separate offense. If such photograph, etc., includes sexual conduct by more than one child, then each child in each photograph, etc., that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

⁵⁶ Section 847.0137(1)(b), F.S., provides “transmit” means the act of sending and causing to be delivered any image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.

⁵⁷ *Smith v. Florida*, 204 So. 3d 18, 19 (Fla. 2016), held that “the use of a file sharing program, where the originator affirmatively grants the receiver access to child pornography placed by the originator in files accessible through the file sharing program, constitutes the transmission of child pornography under the plain meaning of s. 847.0137, F.S.”

change.⁵⁸ Proponents of this change argue that the term “child pornography” should be avoided because:

- It fails to describe the true nature of the material and undermines the seriousness of the abuse from the child’s perspective;
- Pornography is a term primarily used to describe material depicting consensual sexual acts between adults distributed for the purpose of sexual pleasure. Using the term in this context risks normalizing, trivializing, and legitimizing the sexual abuse and exploitation of children; and
- Child pornography implies consent, and a child cannot legally give consent.⁵⁹

Child-like Sex Dolls

In 2019, Florida enacted laws relating to the possession and distribution of child-like sex dolls. Section 847.011(5)(a), F.S., provides that it is a third degree felony for a first offense, and a second degree felony for a second or subsequent offense for a person to knowingly:

- Sell, lend, give away, distribute, transmit, show, or transmute;
- Offer to sell, lend, give away, distribute, transmit, show, or transmute;
- Have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertise in any manner an obscene, child-like sex doll.⁶⁰

It is a first degree misdemeanor for a first offense, and a third degree felony for a second or subsequent offense for a person to knowingly have in his or her possession, custody, or control an obscene, child-like sex doll.⁶¹

Criminal Punishment Code and Offense Severity Ranking

The Criminal Punishment Code⁶² is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, unless otherwise specifically ranked, a felony of the third degree is ranked as a level 1 offense, and a second degree felony is ranked as a level 4 offense.⁶³

⁵⁸ Florida Department of Law Enforcement, *2022 Bill Analysis for SB 1798*, January 19, 2022 (on file with Senate Criminal Justice Committee).

⁵⁹ INHOPE, *What is Child Sexual Abuse Material?* (2022), available at <https://www.inhope.org/EN/articles/child-sexual-abuse-material?locale=en> (last visited February 5, 2022).

⁶⁰ Section 847.011(5)(a), F.S.

⁶¹ Section 847.011(5)(b), F.S.

⁶² Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁶³ Section 921.0023(1) and (2), F.S.

III. Effect of Proposed Changes:

This bill addresses issues that have emerged as a result of rapidly advancing technology. Specifically, it creates new crimes relating to the creation, dissemination, and taking of certain images which are sexually explicit. Additionally, the bill amends current laws dealing with sexually explicit material, including expanding the definition of and changing the term “child pornography.”

Unlawful Promotion of Sexually Explicit Material

This bill creates two new sections of criminal law addressing the promotion, obtaining, and possessing of certain sexually explicit material. The bill defines the following terms relating to these new crimes:

- “Altered sexual depiction” means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: with the nude body parts of another person as the nude body parts of the identifiable person; with computer-generated nude body parts as the nude body parts of the identifiable person; or engaging in sexual conduct in which the identifiable person did not engage.
- “Identifiable person” means a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.
- “Nude body parts” means human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than fully opaque covering any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby.
- “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.
- “Sexually explicit image” means any image⁶⁴ depicting nudity⁶⁵ or depicting a person engaging in sexual conduct.
- “Visual depiction” includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or representation, regardless of whether such photograph, picture, image, motion picture, film, video, or representation was made, modified, altered, adapted, or produced by digital, electronic, mechanical, or other means.

The bill addresses deep fake images by providing a person commits a third degree felony when he or she willfully and maliciously promotes any altered sexual depiction of an identifiable

⁶⁴ “Image” includes, but is not limited to, any photograph, picture, motion picture, film, video, or representation.

⁶⁵ “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding. Section 847.001(9), F.S.

person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction.⁶⁶

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability.⁶⁷

The bill criminalizes the unlawful obtaining, possessing, or promoting of sexually explicit images. A person commits a third degree felony when he or she:

- Knowingly and unlawfully obtains a sexually explicit image of an identifiable person with intent to promote such image.
- Willfully possesses with the intent to promote for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person's consent.⁶⁸

The bill provides a higher penalty, a second degree felony, when he or she willfully promotes for the purpose of pecuniary or any type of financial gain a sexually explicit image of an identifiable person without that person's consent. An exception is provided for sexually explicit images involving voluntary exposure in a public or commercial setting.⁶⁹

Additionally, every act, thing or transaction prohibited in these offenses constitutes a separate offense.⁷⁰ The bill also specifies that a violation is committed within this state if any conduct that is an element of the offense, or any harm to the depicted individual resulting from the offense, occurs in this state.⁷¹

The bill creates a civil cause of action so that an aggrieved person may receive injunctive relief; monetary damages of \$10,000 or actual damages, whichever is greater; and reasonable attorney fees and costs.⁷²

The criminal and civil penalties created for these crimes do not apply to:

- A provider of an interactive computer service, of an information service, or of a communications service which provides the transmission, storage, or caching of electronic communications or messages of others; another related telecommunications or commercial mobile radio service; or content provided by another person;
- A law enforcement officer, or any local, state, federal, or military law enforcement agency that disseminates a sexually explicit image in connection with the performances of his or her duties;
- A person reporting unlawful activity; or

⁶⁶ This new offense is created in the bill under s. 836.13(2), F.S.

⁶⁷ This provision is established in the newly created s. 836.13(4), F.S.

⁶⁸ These new offenses are created under s. 836.14(2) and (3), F.S., respectively.

⁶⁹ This new offense is created under s. 836.14(4), F.S.

⁷⁰ This provision applies to both new offenses and is established in the newly created ss. 836.13(3) and 836.14(5), F.S.

⁷¹ This provision applies to both new offenses and is established in the newly created ss. 836.13(7) and 836.14(8), F.S.

⁷² This provision applies to both new offenses and is established in the newly created ss. 836.13(5) and 836.14(6), F.S.

- A person participating in a hearing, trial, or other legal proceeding.⁷³

Additionally, the felony offenses created in this bill are ranked in the offense severity ranking chart of the Criminal Punishment Code. The third degree felony offense of promoting an altered sexual depiction created in s. 836.13, F.S., is ranked as a level 3 offense. The third degree felony offenses of obtaining a sexually explicit image or possession of a sexually explicit image with intent to promote created in s. 836.14, F.S., are ranked as level 4 offenses. The second degree felony offense of promoting a sexually explicit image created in s. 836.14, F.S., is ranked as a level 5 offense.

Sexual Cyberharassment

The bill amends s. 784.049, F.S., relating to sexual cyberharassment, to increase the minimum monetary damages from \$5,000 to \$10,000 that a victim may receive as a result of a civil action.

Child Sexual Abuse Material and Obscenity

The bill amends ss. 39.0138, 92.56, 92.561, 435.07, 775.0847, 827.071, 847.001, 847.0137, 847.0139, 847.002, 960.03, and 960.197, F.S., to replace the term “child pornography,” with “child sexual abuse material.” Additionally, the bill further amends ss. 775.0847, 827.071, and 847.001, F.S., to expand this term to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

The bill provides that “identifiable minor” means a person:

- Who was a minor at the time the image was created, adapted, or modified, or whose image as a minor was used in the creating, adapting, or modifying of the image; and
- Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

This term may not be construed to require proof of the actual identity of the identifiable minor.

The bill further amends s. 827.071, F.S., to replace the phrase “any sexual conduct by a child,” with the term “child sexual abuse material.” The term “child sexual abuse material,” includes images depicting any sexual conduct by a child.

The bill amends s. 775.0847, F.S., to replace the term “movie” with “motion picture, film, video, or computer-generated motion picture, film, or video,” for purposes of enhancing specified offenses relating to child sexual abuse material or obscenity.

Additionally, the bill expands or adds multiple terms relating to child sexual abuse material or obscenity throughout the Florida Statutes. Specifically the bill:

- Amends the terms “minor” and “child” in ss. 775.0847 and 847.001, F.S., to provide that “minor” or “child” means any person, whose identity is known or unknown, younger than 18 years of age. The bill adds that definition of “minor” or “child” to s. 827.071, F.S.

⁷³ This provision is established in ss. 836.13(6) and 836.14(7), F.S.

- Amends s. 827.071, F.S., to expand the definition of “promote” and includes the new expanded definition of “promote,” to s. 847.001, F.S. The bill provides “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, *transmit*, transmute, publish, distribute, circulate, disseminate, present, exhibit, *send, post, share*, or advertise or to offer or agree to do the same.
- Expands the definition of “sexual conduct,” in ss. 775.0847, 827.071, and 847.001, F.S., to include *simulated* lewd exhibition of the genitals.

Child-like Sex Dolls

The bill amends s. 847.011(5), F.S., relating to the possession of obscene, child-like sex dolls, to provide that a law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe possesses a child-like sex doll.

Additionally, the bill amends a number of sections conforming cross-references to changes made by the act.

The bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill likely has a positive indeterminate fiscal impact (i.e., an unquantifiable increase in prison beds and jail beds) on the Department of Corrections and local jails due to the increased number of prison and jail beds needed for persons convicted of the crimes created in the bill.

The bill creates a third degree felony for promoting an altered sexual depiction. The bill also creates s. 836.14, F.S., to create two third degree felony offenses and one second degree felony offense.

Additionally, the bill expands the definition of child sexual abuse material. Due to this expansion, more people may be arrested and convicted under existing crimes for behavior that is not prohibited under current law, but is prohibited under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.0847, 784.049, 827.071, 847.001, 847.011, 847.0137, 921.0022, 960.03, 288.1254, and 847.0141.

This bill creates the following sections of the Florida Statutes: 836.13 and 836.14.

This bill makes conforming technical changes to the following sections of the Florida Statutes: 39.0138, 92.56, 92.561, 288.1254, 435.07, 456.074, 847.002, 847.01357, 847.0139, 847.0141, 948.06, and 960.197, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 25, 2022:

The committee substitute:

- Creates the third degree felony of *promotion of an altered sexual depiction*, and two third degree felonies and one second degree felony for *unlawfully obtaining, possessing, or promoting a sexually explicit image* which replaces, and targets the same conduct as the crime created in the original bill.

- Increases the amount of monetary damages a victim of sexual cyberharassment may receive in a civil action, from \$5,000 to \$10,000.
- Renames the crime of “child pornography” to “child sexual abuse material” and expands the definition to include any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.
- Provides a definition of “identifiable minor,” that is consistent with the definition under federal law.
- Removes the previous definition of “digitization,” that was provided in the bill.
- Replaces the term “movie” with “motion picture, film, video, or computer-generated motion picture, film, or video,” for purposes of enhancing specified offenses relating to child pornography or obscenity.
- Includes an exception to the warrant requirement if the officer has probable cause to believe a person possesses an obscene, child-like sex doll.

B. Amendments:

None.



FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

Children, Families, and Elder Affairs –
Florida Senate
February 8, 2022

HISTORY & BACKGROUND | COMMUNITY-BASED CARE

Community-Based Care Model

- Part V of Chapter 409, F.S., creates the Community-Based Care Lead Agency model.
- The model ensures that local communities have responsibility for and participate in ensuring the safety, permanence, and well-being for all children in the state.
- This is achieved through the competitive procurement of local non-profit lead agencies to engage community stakeholders in the design and development of a local system of care and the continued maintenance of a child welfare service delivery network within their service area.



HISTORY & BACKGROUND | LOCAL SYSTEM OF CARE

System of Care Structure in Circuits 6 (Pasco and Pinellas) and 13 (Hillsborough)

- Community-Based Care Lead Agency
 - Circuit 6: Eckerd Youth Alternatives (2008 – 2021)
 - Circuit 13: Eckerd Youth Alternatives (2012 – 2022)
- Child Protective Investigations
 - Pasco and Pinellas County Sheriff's Offices in Circuit 6
 - Hillsborough County Sheriff's Office in Circuit 13
- Children's Legal Services
 - State Attorney's Office for the Sixth Judicial Circuit
 - Department's Children Legal Services in the Thirteenth Judicial Circuit



HISTORY & BACKGROUND | KEY PERFORMANCE CONCERNS



State Fiscal Year 2020-2021

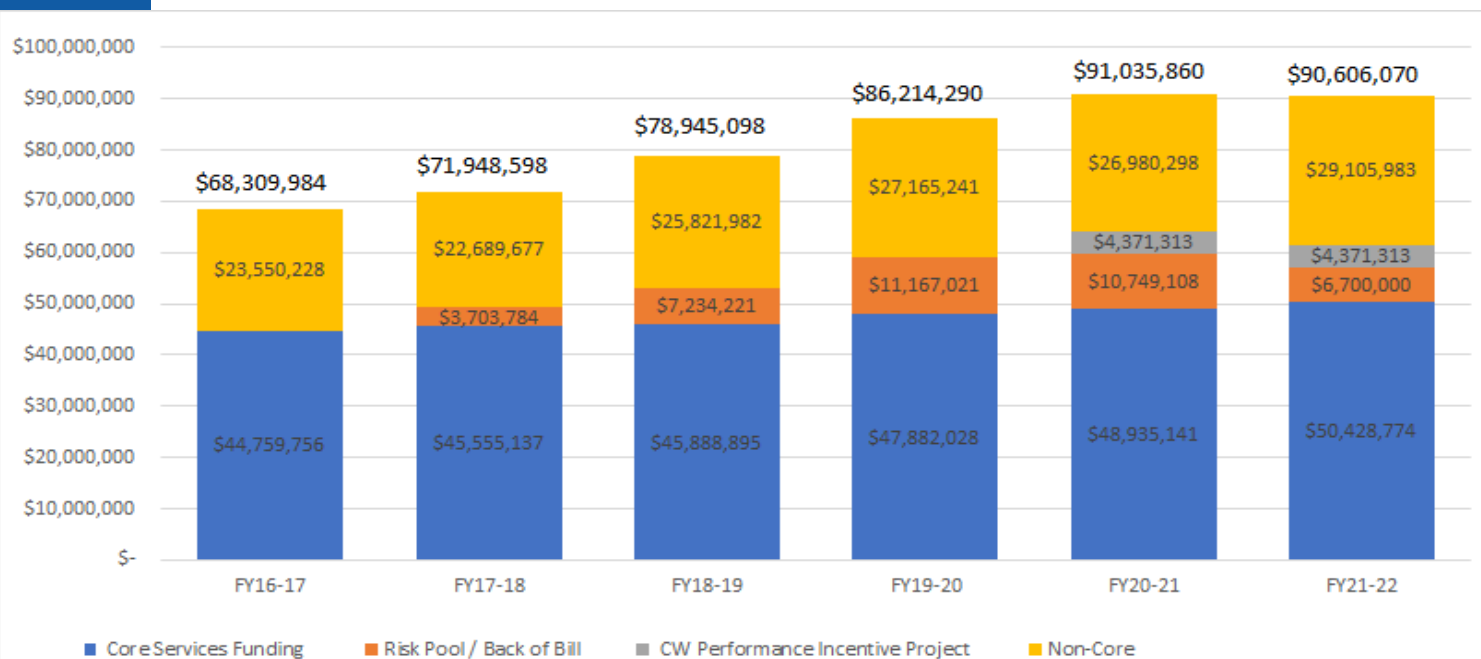
Measure	County Performance	Statewide Performance
Abuse per 100,000 bed days	□□□□□	□□□
Group Care Utilization	□□□□□□	□□□□□
Children Achieving Permanency within 12 Months	□□□□□	□□□□□
Placement moves	□□□□	□□□□
Caseloads	□□□□□	□□□□□

In the last five years, Eckerd received \$39.4 million in combined Risk Pool, Back of the Bill, and LBC amendments.

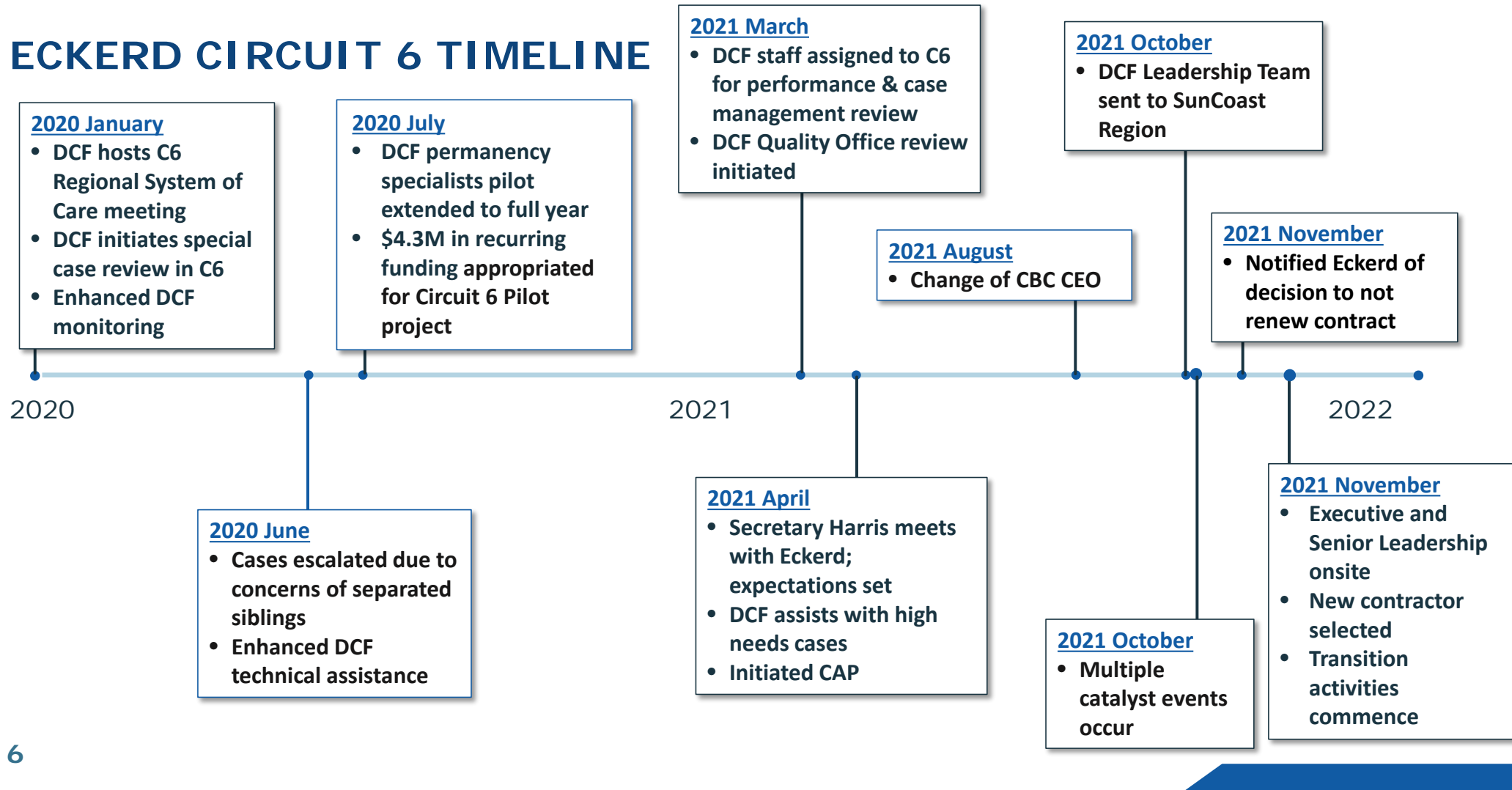
Eckerd spent 25.73% on group care, compared to statewide average of 15.16%.

HISTORY & BACKGROUND KEY PERFORMANCE CONCERNS

Financial Management



ECKERD CIRCUIT 6 TIMELINE



TRANSITION GOALS

- Short-Term Transition Goals
 - Continuity
 - Stability
 - Execution on quick wins
- Mid/Long-Term Transition Goals
 - Reduce the number of children in out of home care
 - Reduce the number of children in group care
 - Increase the number of children exiting the system timely
- Procurement of New CBC Lead Agencies



CIRCUIT 6: NOVEMBER – DECEMBER 2021

Prevention and Intake

- **50% reduction** in removals by the Sheriff's Office from October through December. (**63% reduction** from 2020 to 2021)
- **101 referrals** to Hope Florida – A Pathway to Prosperity through a newly created direct referral process for the Sheriff's Offices.

Dependent Children

- **1,600 reviews** of out-of-home cases for immediate safety and ongoing permanency needs.
- **123 cases** were prepared and readied for permanency and judicial reviews.



CIRCUIT 6: NOVEMBER – DECEMBER 2021

Dependent Children Continued

- **27.5% reduction** in night-to-night placements by finding and establishing long-term placements for more difficult-to-place children.
- **160** recently retired/expired foster parents contacted to gauge interest in re-licensure.
- **34 applications completed** for non-relative caregiver funding.

Adoptions

- **43 adoptions** finalized or scheduled to be finalized for December.



Next Steps





Questions?

